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IN THE
Supreme Court of the United States
OCTOBER TERM, 1997

THE DELAWARE RIVER AND BAY AUTHORITY,
Petitioner,

v.

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, *et al.*,
Respondents.

Petition for a Writ of Certiorari to the Supreme Court of New Jersey

PETITION FOR A WRIT OF CERTIORARI

JOHN G. ROBERTS, JR. *
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

O. FRANCIS BIONDI
JON E. ABRAMCZYK
MORRIS, NICHOLS, ARSHT & TUNNELL
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899
(302) 658-9200
Counsel for Petitioner

Of Counsel:
WAYNE J. POSITAN
LUM, DANZIS, DRASCO, POSITAN & KLEINBERG, LLC
103 Eisenhower Parkway
Roseland, N.J. 07068
(201) 403-9000
* Counsel of Record

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QUESTION PRESENTED

Whether the courts of one state unilaterally may impose upon an interstate authority established pursuant to the Compact Clause of the Constitution (Art. I, § 10, cl. 3) additional duties or obligations implied from the general laws or policies of the compact states, when doing so would contravene express terms of the interstate compact, and when neither the compact states nor Congress have consented to the imposition of such additional duties or obligations upon the interstate authority. The New Jersey high court—in direct conflict with the decisions of this Court, of other state high courts, and of the federal courts —answered that question in the affirmative, and unilaterally imposed upon petitioner the duty to bargain collectively with its employees.

PARTIES TO THE PROCEEDING

Petitioner, defendant-petitioner below, is the Delaware River and Bay Authority ("DRBA" or "Authority"), a government agency created by an interstate compact entered into between the States of New Jersey and Delaware, and approved by Congress. *See* Del. Code Ann. tit. 17, § 1701 *et seq.*; N.J. Stat. Ann. § 32:11E-1 *et seq.*; H.R.J. Res. 783, Pub. L. No. 87-678, 76 Stat. 560 (1962).

Respondents, plaintiffs-respondents below, are the International Union of Operating Engineers, Local 68, AFL-CIO ("Local 68"), DRBA Employees Association a/w International Union of Operating Engineers, Local 68, AFL-CIO ("Association"), Oliver Twist, Judith Twist, Kevin Bailey, Mark P. DeSorbo, David R. Oat, David A. Cusick, John M. Bunting, A.R. Simmons, J. David Johnson, Roy S. MacCulloch, Daniel A. Slater, Sr., Gerald H. Foster, Sr., and David E. Barnett. Local 68 is a labor union in New Jersey. The Association is an organization of DRBA employees. The individuals are DRBA employees who belong to Local 68 and the Association; they sued on their own behalf and on behalf of similarly situated persons. App. 3a, 23a-24a; Br. for Pls.-Appellants in N.J. Super. Ct., pp. 6-7.

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Petition for a Writ of Certiorari to the Supreme Court of New Jersey

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PETITION FOR A WRIT OF CERTIORARI

The Delaware River and Bay Authority ("DRBA" or "Authority") petitions for a writ of certiorari to review the judgment of the New Jersey Supreme Court.

OPINIONS BELOW

The New Jersey Supreme Court decision in this case is reported at 688 A.2d 569 and reprinted in the appendix hereto ("App.") at 1a. That opinion affirmed the decision of the Appellate Division of the New Jersey Superior Court, which is unreported and reprinted at App. 22a. That opinion reversed the order of the Chancery Division of the Superior Court dismissing the complaint, which is unreported and reprinted at App. 31a. A transcript of the Chancery Division's bench ruling in support of that order is reprinted at App. 33a.

JURISDICTION

The New Jersey Supreme Court entered judgment on February 11, 1997, App. 1a, and denied DRBA's timely motion for reconsideration in an order filed on April 24, 1997. *Id.* 52a. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, § 10, clause 3 of the United States Constitution provides, in pertinent part: "No State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State." H.R.J. Res. 783, Pub. L. No. 87-678, 76 Stat. 560 (1962)—the Joint Resolution approving the Compact establishing DRBA—is reprinted at App. 53a. The Compact itself appears as part of the Joint Resolution, and is reprinted at App. 53a. H.R.J. Res. 657, Pub. L. No. 101-565, 104 Stat. 2784 (1990), which approved certain amendments to the Compact, is reprinted at App. 70a.

INTRODUCTION

In establishing a federal Constitution, the framers included a mechanism to enable states to address regional concerns extending beyond a particular state's boundaries without requiring a federal resolution. This mechanism is the Compact Clause (Art. I, § 10, cl. 3), which, while permitting states to join together to advance regional interests, is predicated on the requirement of congressional consent. In the past century in particular, the Compact Clause has been utilized with Congress' consent to great effect by states to address regional issues of enormous importance—including interstate transportation, waste disposal, and allocation of natural resources—as well as to spur economic development. This ingenious feature of our federal system has been so effective that this Court has observed that the interstate "compact is more than a supple device for dealing with interests con-

fined within a region," "it is also a means of safeguarding the national interest." *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. 22, 27 (1951).

This case presents a question of fundamental importance to the future of the interstate compact device. The New Jersey high court below unilaterally imposed upon DRBA the new and additional obligation of having to bargain collectively with its employees, even though imposition of that obligation contravenes the express terms of the Compact, and even though neither Congress nor the compact states themselves have consented to the imposition of that obligation upon the bi-state compact authority. In doing so, the court disregarded cardinal principles of this Court's Compact Clause jurisprudence, and split with the decisions of other state high courts and of the federal courts, which have held—correctly—that state courts cannot unilaterally impose implied obligations on interstate compact authorities. The end result for DRBA and the other Compact Clause entities operating in the New Jersey region is "discord and a destruction of the purposes for which * * * bi-state agencies are formed." App. 20a (Garibaldi, J.) (internal quotation marks omitted).

STATEMENT OF THE CASE

1. Like many states in the Union, Delaware and New Jersey are separated by a common natural boundary—the Delaware River and Bay. To facilitate interstate transportation across this boundary and promote economic growth, Delaware and New Jersey formed the Delaware-New Jersey Compact ("Compact"). That Compact— embodied in virtually identical legislation passed by each state, Del. Code Ann. tit. 17, § 1701 *et seq.*; N.J. Stat. Ann. § 32:11E-1 *et seq.*—established DRBA "as an agency of government" of both states charged with exercising the "essential government functions" necessary to effectuate the purposes of the Compact. Compact art. IV. Congress formally gave its consent to the Compact

on September 20, 1962, by passing a Joint Resolution incorporating the terms of the Compact. H.R.J. Res. 783, Pub. L. No. 87-678, 76 Stat. 560 (1962).

Pursuant to the terms of the Compact, DRBA is governed by a twelve-member board of commissioners, consisting of six residents of each state, appointed by the governor of their respective states. Compact art. V. Any action taken by the Authority must be approved by at least four commissioners from each state; the governor of either state may cancel the vote of any one or more of its commissioners, effectively giving each state the ability to veto DRBA actions. *Id.* art. VI. DRBA is vested with broad authority to fulfill its mission, including the authority to "adopt rules and regulations * * * to carry out and discharge its powers." *See id.* art. VII. The Compact gives both states the right unilaterally to confer "additional powers" upon DRBA by legislation; but it prevents *either* state from imposing upon DRBA "additional duties or obligations * * * without authorization by the law of *both* states." *Id.* art. VIII (emphasis added).[1]

As millions of daily commuters, summer vacationers, and others traveling along the eastern seaboard have come to learn, DRBA operates the Delaware Memorial Bridge between Pennsville, New Jersey and New Castle, Delaware, as well as the ferry service between Cape May, New Jersey and Lewes, Delaware. DRBA has more than 400 permanent, full-time employees, most of whom live and work in Delaware, and operates facilities in both

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[1] Article VIII of the Compact provides:

> For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the Authority by Congress and exercised by it; but *no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States.* [Compact art. VIII (emphasis added).]

states. The Authority's headquarters and administrative facilities, maintenance and toll facilities for the Delaware Memorial Bridge, and the Lewes terminal for the Cape May-Lewes ferry are located in Delaware, whereas the Authority's principal terminal for berthing ferries is located in Cape May, New Jersey. *See* Def.'s Br. in Supp. of Mot. to Dismiss Pls.' Compl. and in Opp. to Pls.' Order to Show Cause ("Def.'s Br. in Supp. of Mot. to Dismiss"), pp. 3-4.

In 1990 the Compact was amended to broaden DRBA's authority to undertake certain economic development projects, and to permit the use of toll revenues to finance such projects. The 1990 amendments—like the formation of the Compact itself—were effected by the passage of virtually identical legislation by each state, 67 Laws of Del., ch. 252; 192 Laws of N.J., ch. 192, which was then submitted to and approved by Congress in a Joint Resolution signed by the President, incorporating the amendments. H.R.J. Res. 657, Pub. L. No. 101-565, 104 Stat. 2784 (1990). In particular, the 1990 amendments added a new article to the Compact (Art. XXII), providing that, in planning and implementing any project (other than a crossing), DRBA must comply with the environmental laws of the state in which the project is located. 104 Stat. at 2795.[2]

2. This case arises from a dispute between DRBA and certain of its employees over the Authority's duty to bargain collectively with its employees. The Compact explicitly authorizes DRBA to "employ such * * * employees as it may require for the performance of its duties and to fix and determine * * * all * * * conditions and terms of employment." Compact art. VII(e). Upon their hiring, DRBA employees are given a copy of

[2] Article XXII goes so far as to identify specific environmental laws that apply to projects depending on their location, including the Delaware Coastal Zone Act, the New Jersey Wetlands Act, and the New Jersey Coastal Area Facility Review Act. 104 Stat. at 2795.

DRBA's Personnel Manual. Article XIV of that Manual specifies that DRBA has no "obligation to engage in collective bargaining with its employees or their chosen representatives," and DRBA does not in fact engage in such negotiations. App. 2a-3a. The Authority does, however, permit its employees to join and designate a labor organization as their individual representative for the purpose of presenting certain employment-related grievances. DRBA Personnel Manual arts. XV and XIX; App. 3a.

In July 1986 twenty-six employees at DRBA's Cape May, New Jersey facility formed the DRBA Employees Association ("Association") for the purpose of presenting individual employee grievances to the Authority in accordance with DRBA policy. The Association is not, and has never been, recognized as a collective bargaining agent for DRBA employees.[3] In August 1993 a labor union, International Union of Operating Engineers, Local 68, AFL-CIO ("Local 68"), sought to "affiliate" with the Association and to obtain recognition as the collective bargaining agent of Association members. Two months later, Local 68 renewed that request, then instituted this action in New Jersey state court, seeking an order compelling DRBA to hold an election, recognize Local 68 as a collective bargaining representative following the election, and engage in collective negotiations with the Association. App. 3a.

In support of this demand, respondents did not point to any specific provision of the Compact obligating DRBA to bargain collectively with its employees or their representatives. Instead, they maintained that "state regula-

[3] Shortly after it was formed, the Association sought recognition from DRBA as the exclusive collective bargaining agent of its members; DRBA denied that request. As a result, in the past ten years, the Association's role vis-à-vis DRBA has been limited to presenting individual employee grievances and proposals, in accordance with the procedure set forth in Article XIX of DRBA's Personnel Manual. *See* App. 3a.

tion of a bi-state agency can be sustained on the basis that there are substantially similar legislative acts in both states," and urged the New Jersey courts to *imply* from the general laws of the compact states a collective bargaining obligation binding on DRBA. Pls.' Br. in Supp. of Order to Show Cause, p. 15.[4] DRBA moved to dismiss.

3. On November 19, 1993, the Chancery Division of the New Jersey Superior Court, Cape May County, granted DRBA's motion. App. 31a. In an accompanying bench ruling, the court—invoking this Court's Compact Clause precedents—explained that, "since interstate compacts are not a product of a single state, no creat[or] state can unilaterally impose additional powers, duties or responsibilities that infringe on the * * * compact." *Id.* 49a. "[T]he New Jersey Courts [therefore] cannot * * * dictate the policy of [DRBA]." *Id.* 50a. The Chancery Division found that doing so "would be intrusive to running [DRBA]," especially in the area of "[c]ollective negotiations." *Id.* 49a-50a. Moreover, it explained, "for a [Court] to intrude in this area * * * is rather dangerous and * * * raises conflicts not only * * * between the states, but within this state." *Id.* 51a. The court thus held that it was without jurisdiction to hear the case and, in any event, lacked authority to grant the requested relief. *Id.* 50a-51a.

On August 2, 1995, a three-judge panel of the Appellate Division of the New Jersey Superior Court reversed.

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[4] Respondents relied in principal part upon N.J. const. art. I, § 19; N.J. Stat. Ann. § 34:13A-1 tc -29; and Del. Code Ann. tit. 19, §§ 1301-12 (1985 & Supp. 1992), *repealed and reenacted by* 69 Del. Laws ch. 466 (1994), which entitle certain state and local employees to join labor unions and to negotiate collectively with their employers through a representative of their choosing. None of those general labor laws—or any other provision cited by respondents—expressly refers to or by its terms is made applicable to DRBA or its employees, or any other interstate compact authorities. Nor is there any indication that they were in fact intended to apply to interstate governmental authorities such as DRBA.

That court held at the outset that it had jurisdiction over the dispute pursuant to Article XV of the Compact, which provides that "[j]udicial proceedings to review * * * [any] action of the authority or to determine the meaning or effect thereof, may be brought in [the] court[s] of each state." *See* App. 26a. Turning to the merits, the court then held that, while "neither [compact] state may individually impose its will on a bi-state agency," an "agency may be made subject to complementary or parallel state legislation." *Id.* Thus, while it acknowledged that the Delaware and New Jersey labor laws are different, *id.* 27a, the Appellate Division—unlike the trial court—saw fit to "impl[y]" from those laws an "agreement that public employees, including DRBA's, may organize and designate a representative to engage in collective negotiations on their behalf." *Id.* 29a.

4. The New Jersey high court—exercising its discretion to decide cases of "general public importance," N.J. Rule Governing App. Prac. 2:12-4—granted DRBA's petition for certification, App. 4a,[5] and, on February 11, 1997, affirmed. *Id.* 14a. Like the Appellate Division, a majority of the high court justices acknowledged that "[a] single state may not unilaterally impose additional duties on a bi-state agency," but ruled that one state's court may subject a bi-state agency to the "complementary or parallel legislation" of both states under an implied-consent theory. *Id.* 9a-10a. In so ruling, the majority recognized that—because neither state had adopted labor legislation specifically applying to DRBA, or had designated an administrative tribunal to resolve labor disputes involving DRBA (as the states had done with respect to particular employers)—a "myriad of issues * * * will arise during the

[5] In its petition for certification, DRBA argued, *inter alia*, that "the Appellate Division's decision conflicts with federal constitutional law," as well as with this Court's Compact Clause decisions, insofar as it permits the courts of one compact state unilaterally to impose additional obligations upon an interstate compact entity in direct contravention of the Compact. Pet. for Certif., pp. 1, 3, 4. *See also* Reply Br. in Supp. of Pet. for Certif., pp. 2, 4 n.1.

course of collective negotiations." *Id.* 14a (internal quotation marks omitted). Nevertheless, the majority held that the New Jersey courts were free to resolve these issues, and unilaterally to decide which state's laws govern when the New Jersey and Delaware laws conflict. *Id.*

Justice Garibaldi dissented. She reasoned that, "[a]lthough in some situations an agency may be subject to complementary or parallel legislation when the issue is limited to interpreting a state law or regulation, such legislation cannot and should not be used to repeal the Compact." *Id.* That is precisely what the New Jersey courts had done here, since "[r]equiring the DRBA to negotiate collectively with its employees most definitely will impose 'additional duties or obligations' on it," in direct contravention not only of Article VIII of the Compact, requiring *both* states by law to consent to such a result, but also of Article VII(e) of the Compact, vesting in DRBA the authority to fix the terms and conditions of employment, which was "intended to keep matters concerning labor relations and collective negotiations in the hands of the DRBA." *Id.* 15a.

To Justice Garibaldi, "[p]ermitting similar legislative acts of compacting states to amend a compact completely disregards the long-standing precedents requiring legislatures to agree expressly before a state can impose duties and obligations on a bi-state agency," resulting in "discord and a destruction of the purposes for which such bi-state agencies are formed." *Id.* 19a-20a (internal quotation marks omitted). Indeed, "[a]lthough the labor laws of New Jersey and Delaware are based on similar public policies, they differ in [numerous significant respects]." *Id.* 20a-21a.[6] The majority's decision, therefore, "will create

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[6] Justice Garibaldi noted the following conflicts: "(1) each States' statute describes a different procedure for determining the employee-bargaining unit; (2) the provisions for determining unfair labor practices and enforcing the statutes are different; (3) the New Jersey statute provides for arbitration of disputes whereas the Delaware statute does not; and (4) neither statute indicates in its

uncertainty as to which state's law and administrative procedures apply to a given situation," precipitating precisely the sort of confusion that New Jersey and Delaware sought to *avoid* when they formed DRBA and specified in Article VIII of the Compact that the interstate entity could not be subjected to additional duties or obligations without the consent of both states. *Id.*

DRBA filed a timely motion for reconsideration (*see* N.J. Rule Governing App. Prac. 2:11-6), which was denied in an order filed on April 24, 1997. App. 52a.[7]

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declaration or purpose that it intended for the statute to apply to the DRBA." App. 21a. (citations omitted).

[7] The Appellate Division had remanded for a "determin[ation] how the complementary labor policies of New Jersey and Delaware, as expressed in their parallel labor legislation, are to be effectuated." App. 30a. The state high court, however, has conclusively decided the federal constitutional question presented. That question, moreover, is controlling with respect to respondents' complaint and request for relief. The limited remand is designed solely to determine how—not whether—DRBA will be required to bargain collectively with its employees. There is no non-federal ground upon which DRBA could prevail that would obviate the need to address the threshold federal question presented; "the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings." *Cox Broad. Corp.* v. *Cohen*, 420 U.S. 469, 480 (1975). At the same time, "reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action." *Id.* at 482-483. In these circumstances, the New Jersey Supreme Court judgment is plainly "final" for purposes of 28 U.S.C. § 1257(a), and thus subject to review by this Court. *See, e.g., ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 612 (1989); *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299, 306-307 (1989); *Mississippi Power & Light Co.* v. *Mississippi ex rel. Moore*, 487 U.S. 354, 370 n.11 (1988); *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 179-180 (1988).

REASONS FOR GRANTING THE WRIT

I. THE DECISION BELOW CONFLICTS WITH THIS COURT'S COMPACT CLAUSE PRECEDENTS, AS WELL AS WITH THE DECISIONS OF OTHER STATE HIGH COURTS AND THE FEDERAL COURTS.

1. The Compact Clause of the Constitution permits a state to "enter into any Agreement or Compact with another State," but only with "the consent of Congress." U.S. Const. art. I, § 10, cl. 3. Through this Clause "'[t]he framers * * * astutely created a mechanism of legal control over affairs that are projected beyond State lines and yet may not call for, nor be capable of, national treatment.'" *Petty* v. *Tennessee-Missouri Comm'n*, 359 U.S. 275, 282 n.7 (1959) (quoting Felix M. Frankfurter & James M. Landis, *The Compact Clause of the Constitution—A Study in Interstate Adjustments*, 34 Yale L.J. 685, 695 (1925)). In the past century in particular scores of interstate compacts have been formed by the states with Congress' consent to address regional problems or issues that often are of genuine national import, and to resolve interstate disputes. *See West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. at 26-28.[8]

This case presents a basic constitutional question of overriding importance to the interstate compact device:

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[8] There are more than 175 interstate compacts in existence across the country today, addressing a variety of regional problems of enormous importance to affected states—and, indeed, to the effective governance of the Union as a whole—including mass transit, energy conservation, fisheries, flood control, placement of children, waste disposal, economic development, regulation of land and water resources, law enforcement and corrections, and taxation. *See* Judith Resnik, *Afterword: Federalism's Options*, 14 Yale L. & Pol'y Rev. 465, 502-503 (1996); Kevin J. Heron, *The Interstate Compact in Transition: From Cooperative State Action to Congressionally Coerced Agreements*, 60 St. John's L. Rev. 1, 2 (1985); The Council of State Governments, *Interstate Compacts 1783-1970*, at 4 (1971). *See also* Frankfurter & Landis, *supra*, at 730-758 (cataloguing interstate compacts from colonial to modern times).

whether the courts of one state unilaterally may subject an interstate compact authority to additional duties or obligations implied from the general laws or policies of the compact states, when, as here, doing so would contravene express terms of the compact without the actual consent of the compact states or Congress.[9] In answering that question in the affirmative, the New Jersey high court contravened this Court's Compact Clause precedents, and split with the decisions of other state high courts and the federal courts on the precise question presented. Those other courts hold—consistent with this Court's precedents—that the fact that "two [compact] States have evinced the same, or similar, public policy * * * by enacting similar * * * laws is *not* sufficient * * * to render [a compact] properly amended or supplemented." *Malverty* v. *Waterfront Comm'n of New York Harbor*, 524 N.E.2d 421, 422 (N.Y. 1988) (emphasis added).

2. This Court's Compact Clause decisions establish several basic guideposts, among which is that a single state may not attempt to regulate or control a Compact Clause entity. As the Court recently explained in *Hess* v. *Port Auth. Trans-Hudson Corp.*, 513 U.S. 30, 42 (1994), "within any single State in our representative democracy, voters may exercise their political will to direct state policy; bi-state entities created by compact, however, are not subject to the unilateral control of any one of the States that compose the federal system." *See id.* at 47 ("no one State alone can control the course of a Compact Clause entity"); *West Virginia ex rel. Dyer* v. *Sims*, 341 U.S. at 28 ("It requires no elaborate argument to reject the suggestion that an agreement solemnly entered into between

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[9] This question is plainly federal in nature, *see Cuyler* v. *Adams*, 449 U.S. 433, 438 (1981); *Sims*, 341 U.S. at 26; *Delaware River Joint Toll Bridge Comm'n* v. *Colbrunn*, 310 U.S. 419, 427 (1940), turning on a proper application of the constitutionally grounded principles established by this Court's Compact Clause precedents, as well as construction of Article I, § 10, cl. 3 of the Constitution and the federal law embodied by the Compact.

States * * * can be unilaterally nullified, or given final meaning by an organ of one of the contracting States.").[10]

This principle is grounded in the unique position that Compact Clause entities occupy in our federal system. "The States, as separate sovereigns, are the constituent elements of the Union. Bistate entities, in contrast, typically are creations of three discrete sovereigns: two States and the Federal government." *Hess*, 513 U.S. at 40. A state, in entering into a compact, surrenders a portion of its own sovereignty to the other compact states and the federal government, and agrees to be bound by the compact terms and conditions, absent the concerted action of the compact states to alter them with the consent of Congress. *See United States* v. *Bekins*, 304 U.S. 27, 52 (1938); Marian E. Ridgeway, *Interstate Compacts: A Question of Federalism* 300 (1971) ("An interstate compact, by its very nature, shifts a part of a state's authority to another state or states, or to the agency the several states jointly create to run the compact").

The New Jersey Supreme Court decision—permitting the courts of one state unilaterally to subject an interstate compact authority to additional obligations or duties in direct contravention of the compact without the express consent of the compact states or Congress—violates this cardinal rule. Indeed, as Justice Garibaldi put it, the New Jersey Supreme Court below "has done what the Legislatures of New Jersey and Delaware have not—amend the congressionally-approved Interstate Compact * * * between Delaware and New Jersey to require [DRBA] to negotiate collectively with its employees." App. 14a. In the process, that court not only has imposed *its* will on the compact authority and the compact states—which, it

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[10] *See also Northeast Bancorp, Inc.* v. *Board of Governors*, 472 U.S. 159, 175 (1985) ("classic indicia of a compact are missing" where "each State is free to modify or repeal its law unilaterally"); *Port Auth. Trans-Hudson Corp.* v. *Feeney*, 495 U.S. 299, 315 (1990) (Brennan, J., concurring in part and concurring in judgment) ("it is not within the autonomous power of any State to * * * regulate an interstate agency").

is undisputed, have never specifically agreed to the imposition of an additional collective bargaining duty upon DRBA, as required by Article VIII of the Compact, *see* note 1, *supra*—but it has eliminated Congress' constitutionally mandated consent role in the compact amendment process.[11]

"The requirement of congressional consent is at the heart of the Compact Clause." *Cuyler* v. *Adams*, 449 U.S. at 439. "By vesting in Congress the power to grant or withhold consent, or to condition consent on the States' compliance with specified conditions, the Framers sought to ensure that *Congress* would maintain ultimate supervisory power over cooperative state action that might otherwise interfere with the full and free exercise of federal authority." *Id.* at 439-440 (emphasis added). The decision below circumscribes Congress' constitutionally mandated consent role, because it permits the courts of a single compact state to amend an interstate compact without the consent of Congress, let alone the legislatures of the compact states. The result is to transfer from Congress to this Court, exercising its certiorari jurisdiction or, in direct disputes between compact states, its original jurisdiction, the "ultimate supervisory power" (*id.*) over interstate compacts—in direct conflict not only with *Cuyler*, but with the text of the Compact Clause as well.

At the same time, the New Jersey Supreme Court—again, in direct contravention of this Court's precedents—has assumed the authority to alter the terms of a compact that is federal, not state, law. "[O]nce given, congressional consent transforms an interstate compact within this Clause into a law of the United States." *Texas* v. *New*

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[11] As the state delegates to the negotiations that resulted in the Delaware-New Jersey Compact themselves recognized: "A change in the terms of an existing agreement is itself an agreement. Only the States may enter into such subsequent agreement, with the consent of Congress." DRBA, *Minutes of Meeting Between Delaware and New Jersey Representatives Leading to the Preparation of a Compact Between New Jersey and Delaware* 27 (1963) (summary analysis of report to the Governor of the State of Delaware).

Mexico, 462 U.S. 554, 564 (1983) (internal quotation marks omitted). *See Cuyler*, 449 U.S. at 438-439; *Petty* v. *Tennessee-Missouri Comm'n*, 359 U.S. at 278. "One consequence of this metamorphosis is that, unless the compact to which Congress has consented is somehow unconstitutional, *no court* may order relief inconsistent with its express terms." *Texas*, 462 U.S. at 564 (emphasis added). In ordering DRBA to bargain collectively with its employees—in plain derogation of Articles VII(e) and VIII of the Compact—the New Jersey Supreme Court did just that, prescribing relief that even this Court is without authority to confer. *See id.*[12]

More fundamentally, because the New Jersey Supreme Court decision amends the Compact, the state high court, in effect, made *federal* law. That anomalous result underscores the impropriety of the New Jersey rule. Federal law—the Compact (Art. VIII) and the U.S. Constitution

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[12] The same conclusion follows under the principles governing the construction of interstate compacts. "A Compact is, after all, a contract." *Texas* v. *New Mexico*, 482 U.S. 124, 128 (1987) (internal quotation marks omitted). *See Oklahoma* v. *New Mexico*, 501 U.S. 221, 235 n.5 (1991) ("a congressionally approved compact is both a contract and a statute"); *id.* at 242 (Rehnquist, C.J., joined by O'Connor, Scalia, and Kennedy, JJ., concurring in part and dissenting in part) ("An interstate compact, though provided for in the Constitution, and ratified by Congress, is nonetheless essentially a contract between signatory States"). As such, "[i]t remains a legal document that must be construed and applied in accordance with its terms," *Texas* v. *New Mexico*, 482 U.S. at 128.

Courts—including this Court—lack the authority unilaterally to alter or reform the terms of such contracts. *See Texas* v. *New Mexico*, 462 U.S. at 566 (rejecting argument "that reformation of the Compact is within this Court's equitable powers"); *Oklahoma* v. *New Mexico*, 501 U.S. at 243 (Rehnquist, C.J., joined by O'Connor, Scalia, and Kennedy, JJ., concurring in part and dissenting in part) (Court lacks authority to "var[y] the terms of a contract to which the States of Oklahoma, New Mexico, and Texas freely agreed"). The New Jersey courts below have—in direct conflict with these precedents—varied the terms of the Delaware-New Jersey Compact by imposing on DRBA an additional collective bargaining duty without the consent of either compact state or Congress, in contravention of Articles VII(e) and VIII of the Compact.

(Art. I, § 10, cl. 3)—establish a detailed legislative process for amending the Compact and imposing additional obligations on DRBA. That process—quite unlike the one sanctioned by the New Jersey courts—requires the legislative consent of both states and Congress. Thus, when New Jersey and Delaware were in fact of one mind to subject DRBA to their parallel *environmental* laws, they each debated and passed nearly identical legislation—stating in express terms that the legislation was intended to apply to DRBA and to amend the Compact—that was then submitted by the states to Congress, which granted its consent by passing a Joint Resolution incorporating the amendment. *See supra* at 5.[13]

3a. The conflict is even more acute at the lower court level. For example, the New Jersey Supreme Court decision directly conflicts with the New York high court decision in *Malverty* v. *Waterfront Comm'n of New York Harbor*. In that case a former licensed dockworker sought a court order compelling the Waterfront Commission of New York Harbor ("Waterfront Commission")—an inter-

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[13] The contrast between the process by which the Compact was amended by the New Jersey courts below to impose upon DRBA an additional collective bargaining obligation, and the process by which it was amended by the compact states in 1990 to impose upon DRBA an additional obligation to comply with the states' respective environmental laws, could not be more stark. Prior to the 1990 amendments, (1) each compact state passed legislation stating that it applied to DRBA, was intended to amend the Compact, and would take effect only upon the passage of companion legislation by the other state and the consent of Congress, 1989 N.J. Laws, chs. 191 & 192; 67 Del. Laws, chs. 252 & 253 (1989); (2) legislation seeking the constitutionally required congressional consent was then introduced in both Houses of Congress, H.R.J. Res. No. 657, 101st Cong. (1990) (enacted); S.J. Res. No. 373, 101st Cong. (1990) (enacted), considered and reported out of committee, H.R. Rep. No. 101-905, 101st Cong. (1990), debated on the floor, 136 Cong. Rec. H10967 (daily ed. Oct. 22, 1990); 136 Cong. Rec. S16860 (daily ed. Oct. 23, 1990), and eventually passed by both Houses, Pub. L. No. 101-565 (1990), 104 Stat. 2795; and (3) that legislation was then signed by the President, 26 Weekly Comp. Pres. Doc. 1847 (Nov. 15, 1990).

state compact entity formed by New York and New Jersey with the consent of Congress, *see* Act of Aug. 12, 1953, ch. 407, Pub. L. No. 252, 67 Stat. 541 (1953)—to restore him to the pertinent longshoremen's register. In support of that request, the former worker relied on the existence of similar legislation enacted by the compact states, entitling convicted state offenders (such as Malverty) to certain public employment opportunities. 524 N.E.2d at 422.

Like the DRBA Compact, the Waterfront Commission compact requires the consent of both states prior to the imposition of any new terms or conditions upon the compact entity. The parallel New York and New Jersey employment discrimination legislation did not "refer[] to the Waterfront Commission" and contained no "express statement that the Legislature was amending or supplementing the provisions of the 'Compact.'" *Id.* at 422. Accordingly, the New York high court refused to conclude that either state had agreed to subject the Waterfront Commission to the legislation. *Id.* It then held: "That the two States have evinced the same, or similar, public policy regarding employment opportunities for former inmates by enacting similar 'antidiscrimination' laws is *not* sufficient under the express terms of the 'Compact' to render [the compact] properly amended or supplemented such that the Commission would be subject to the provisions of [New York's antidiscrimination laws]." *Id.* (citation omitted; emphasis added). This, of course, is the precise converse of the New Jersey rule.[14]

The clear import of the New York high court decision in *Malverty* has not been lost on the New Jersey Supreme

[14] Other New York state court decisions are to the same effect. *See, e.g., Bailey* v. *Port Auth. of New York & New Jersey*, No. 40149-92 (N.Y. Sup. Ct. May 18, 1994) (rejecting argument that New York Human Rights Law applied to bi-state compact authority based upon the existence of similar legislation in New Jersey, because legislation did not state that it was intended to apply to the authority or to amend the compact), *aff'd*, 627 N.Y.S.2d 921 (N.Y. App. Div. 1995).

Court. In *Eastern Paralyzed Veterans Ass'n* v. *City of Camden*, 545 A.2d 127, 132 (N.J. 1988) (emphasis added), the New Jersey court cited *Malverty* as directly contrary authority, standing for the proposition that "similar public policy of two states does *not* suffice to render one state's legislation applicable to bi-state Commission's employment practices." The court's decision in this case, moreover, is in direct conflict with *Malverty*: under *Malverty*, the fact that New Jersey and Delaware independently passed similar legislation entitling certain public employees to collective bargaining rights would be of no moment because, as all agree, neither state's law is by its terms made applicable to DRBA or indicates that it was intended to alter the terms of the interstate compact. Justice Garibaldi—who embraced and applied the *Malverty* rule—reached precisely that conclusion. App. 19a-20a. This direct conflict in itself warrants plenary review.

b. The Delaware and Pennsylvania courts have similarly refrained from imposing additional duties or obligations upon interstate compact authorities in contravention of existing compact terms and, instead, have required concurrent legislation passed by the compact states plainly stating that it applies to the interstate authority or is in fact intended to amend the compact. *See, e.g., Nardi* v. *Delaware River Port Auth.*, 490 A.2d 949, 950 (Pa. Commw. Ct. 1985) (recognizing that "neither creator state can unilaterally impose additional duties, powers or responsibilities upon the Authority," and refusing to subject interstate compact authority to states' employee disability benefits laws); *Delaware River & Bay Auth.* v. *Carello*, 222 A.2d 794, 799 (Del. Ch. 1966) (recognizing that "[t]he power over Authority employees thus placed in the hands of the Commissioners may not be impaired or diluted by the unilateral action of one member to the compact," and refusing to subject DRBA to state collective bargaining obligation).

The Delaware court ruling in *Carello* was rendered before New Jersey had passed legislation entitling certain of New Jersey's public employees to collective bargaining

rights. Following the enactment of such legislation in 1968, the New Jersey courts were presented with—and rejected—the argument that DRBA was subject to a collective bargaining obligation under that law and the parallel Delaware law, stating: "As we see it, to accomplish th[is] result * * * the States of New Jersey and Delaware must first amend the compact and agree upon the issue whether [DRBA]'s employees may organize and engage in collective negotiations, what procedure should be utilized to implement this result, and where and how it should be accomplished." *Delaware River & Bay Auth.* v. *New Jersey Pub. Employment Relations Comm'n* ("*PERC*"), 270 A.2d 704, 707 (N.J. Super. Ct. App. Div. 1970), *aff'd*, 277 A.2d 880 (N.J. 1971). The New Jersey Supreme Court has since done an about-face, accounting for the contrary result it reached in this case, and placing New Jersey in conflict with each of its neighboring states —New York, Pennsylvania, and Delaware—with which New Jersey has entered into several significant interstate compacts in addition to the Compact creating DRBA. *See infra* at 25-27.[15]

c. The New Jersey rule also conflicts with the rule applied in states beyond the Delaware River Basin region. In *Salmon for All* v. *Department of Fisheries*, 821 P.2d 1211, 1215-16 (Wash. 1992) (en banc), for example, the Washington high court rejected the argument that meetings of the Columbia River Compact—an interstate compact established between Washington and Oregon and approved by Congress, Act of Apr. 8, 1918, ch. 47, Pub. L. No. 123, 40 Stat. 515—were subject to a state open public meetings statute, holding "that interstate compact affairs are only subject to state law if the compact's terms agree so." *See also Klickitat County* v. *State*, 862 P.2d

[15] The New Jersey lower courts are now bound to follow the rule applied in this case. *See, e.g., Textar Painting Corp.* v. *Delaware River Port Auth.*, 686 A.2d 795, 798 (N.J. Super. Ct. Law Div. 1996) (interstate compact authority subject to state law governing bidding of public contracts because New Jersey and Pennsylvania had "substantially similar" laws on this score).

629, 632-633 (Wash. Ct. App. 1993) (rejecting argument that interstate compact authority was subject to state land use requirements). *But see Redbird Eng'g Sales, Inc.* v. *Bi-State Dev. Agency of Missouri-Illinois Metro. Dist.*, 806 S.W.2d 695, 701 (Mo. App. Ct. 1991) (holding that interstate compact agency "may be made subject to complementary or parallel state legislation," and that the defendant compact authority was subject to the public works bond requirement found in "complementary" statutes of the compact states).

The federal courts have also refused to impose upon interstate compact authorities additional state law duties or obligations merely because the compact states have passed similar laws in other contexts. In *Seattle Master Builders Ass'n* v. *Pacific Northwest Electric Power & Conservation Planning Council*, 786 F.2d 1359, 1371 (9th Cir. 1986), *cert. denied*, 479 U.S. 1059 (1987), for example, the Ninth Circuit rejected the argument that a compact agency was subject to the "environmental impact assessment" requirement of the parallel Washington and Montana environmental laws. *See also C.T. Hellmuth & Assocs.* v. *Washington Metro. Area Transit Auth.*, 414 F. Supp. 408, 409-410 (D. Md. 1976) (refusing to subject interstate compact authority to "comparable" state public information laws, because doing so would violate "settled" rule that "one party may not enact legislation which would impose burdens upon the compact absent the concurrence of the other signatories").[16]

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[16] The *C.T. Hellmuth* court squarely rejected the argument—adopted by the New Jersey Supreme Court below—"that the rule [against unilateral imposition of additional obligations upon a compact] is inapplicable where it is claimed the [compact] parties have equivalent legislation." 414 F. Supp. at 409. In doing so, moreover, it dismissed the notion—also embraced by the New Jersey courts—that the existence of such legislation indicates a "tacit agreement" between the states to subject the compact authority to such legislation, as well as the argument "that the existence of comparable legislation eliminates the possibility that one party may impinge upon the others' interests." *Id.* at 409-410.

II. THE QUESTION PRESENTED IS OF OVERRIDING IMPORTANCE TO THE GOVERNANCE AND CONTINUING UTILITY OF NUMEROUS INTERSTATE COMPACTS.

1. This conflict of authority plainly warrants resolution by this Court. The New Jersey Supreme Court ruling has profound implications not only for DRBA but for the numerous other interstate compact authorities within the New Jersey courts' reach. These interstate agencies now face the prospect that the New Jersey courts will unilaterally conclude that they are subject to a host of additional duties or obligations never in fact agreed to by their creator states or approved by Congress; while, until the courts say so, the same interstate agencies must operate in the dark as to what those additional duties or obligations may be. The end result, as Justice Garibaldi observed, is "discord and a destruction of the purposes for which * * * bi-state agencies are formed." App. 20a (internal quotation marks omitted).

2a. The most direct and immediate impact of the New Jersey high court ruling will of course be felt by DRBA. The decision directly interferes with the operation of DRBA in an area of fundamental concern to any employer—labor relations. As the trial court found, imposition of an additional "collective negotiation" duty will "be intrusive to running [DRBA]." *Id.* 49a-50a. This intrusion, moreover, plainly was *not* intended by the creator states. As Justice Garibaldi observed, requiring DRBA to negotiate collectively with its employees contravenes the plain import of Article VII(e) of the Compact—vesting in DRBA the sole authority to establish the terms and conditions of employment—which was designed "to keep matters concerning labor relations and collective negotiations in the hands of the *DRBA*." App. 15a (emphasis added). *See also id.* 19a ("DRBA did not consent to the exercise of single-state jurisdiction in the area of collective negotiations with its employees").[17]

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[17] This Court itself has recognized the important interest of public employers in managing such affairs. *See, e.g., Board of County*

But the impact of the New Jersey Supreme Court decision runs much deeper. The court's ruling disrupts the careful balance struck by the creator states—and embodied in the Compact—to ensure that neither state would be in a position to foist its will on the Authority or the other compact state. To this end, the Compact creates an equal number of commissioners from each state to govern DRBA, Compact art. V; provides that no action may be taken by DRBA unless a certain number of commissioners from each state are present, *id.* art. VI; gives to the governor of each state the authority, in effect, to veto any DRBA action, *id.* art. VI; and prohibits the imposition upon DRBA of "additional duties or obligations * * * without the authorization by the law of both states," *id.* art. VIII. The New Jersey Supreme Court decision, in stark contrast, permits the courts of one state *unilaterally* to impose additional duties or obligations upon DRBA simply by implying them from the general laws or policies of the compact states, leaving DRBA, its commissioners, and the governors of the compact states with little recourse but to seek review of such judicially imposed compact amendments before this Court.

At the same time, the decision creates enormous confusion and uncertainty as to which particular laws apply to interstate authorities such as DRBA. As the New Jersey Supreme Court itself recognized, a "myriad of issues * * * will arise during the course of collective negotiations." App. 14a. Because—as the court also acknowledged—the New Jersey and Delaware laws are "not

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Comm'rs, Wabaunsee County, Kan. v. *Umbehr*, 116 S. Ct. 2342, 2348 (1996) ("[t]he government's interest in achieving its goals as effectively and efficiently as possible is elevated from a relatively subordinate interest when it acts as sovereign to a significant one when it acts as employer.") (internal quotation marks and citation omitted); *EEOC* v. *Wyoming*, 460 U.S. 226, 238 n.11 (1983) ("A State's employment relationship with its workers can, under certain circumstances, be one vehicle for the exercise of its core sovereign functions.").

identical," *id.* 12a, questions inevitably will arise as to which state's law trumps the other's in particular instances. *See id.* at 20a-21a (discussing differences between the New Jersey and Delaware labor laws). The task of picking and choosing among conflicting provisions of so-called "parallel" laws—such as whether New Jersey's or Delaware's rules for determining unfair labor practices govern in a dispute arising from DRBA's refusal to recognize a purported collective bargaining agent, *compare* N.J. Stat. Ann. § 34:13A-5.4 *with* Del. Code Ann. tit. 19, § 1308—does not lend itself to judicially manageable standards. Even if it did, the courts, in the process of "cherry picking" between conflicting provisions, would be forced to disrupt the delicately crafted compromises and policy choices that are part and parcel of the enactment of comprehensive legislative codes, especially in the field of labor law.[18]

All of this has enormous practical consequences for DRBA. As noted, the Authority has more than 400 permanent, full-time employees, operates huge facilities and machinery in Delaware and New Jersey, and undertakes multi-million dollar economic development and construction projects in both states. DRBA now faces the prospect that it will be subjected to any number of additional

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[18] As the federal court observed in *C.T. Hellmuth*, in refusing to imply a duty on the part of the Washington Metropolitan Area Transit Authority ("WMATA")—an interstate compact agency established by Maryland, Virginia, and the District of Columbia with Congress' consent, Act of Nov. 6, 1966, Pub. L. No. 89-774, 80 Stat. 1324—to comply with the similar freedom of information laws of the compact states:

> [T]hese laws reflect considered policy decisions of the respective jurisdictions as to the types of information which should be accessible to the public and the circumstances under which it will be made available. ***Regardless of how similar the laws may be,*** plainly Maryland may not impose its preferences in this regard upon Virginia and the District, for such an imposition, however minimal, is nonetheless an intrusion upon their interests and in derogation of the compact. [414 F. Supp. at 410 (emphasis added).]

laws—including employee benefits laws, public information laws, prevailing wage laws, and public bidding laws —found in the New Jersey and Delaware codes, even though those laws are not by their terms applicable to DRBA and neither the compact states nor Congress have expressed any intent that the laws be applied to interstate agencies. Moreover, the Authority is left guessing what these particular duties and obligations are until the New Jersey courts imply them from time to time in the context of ongoing disputes. And, at the end of the day, DRBA will be subjected to one set of rules by the New Jersey courts, which are willing to imply such obligations from the general laws or policies of the compact states, and another by the Delaware courts, which are not; indeed, the New Jersey and Delaware courts are now split on the fundamental question whether DRBA is subject to a collective bargaining duty. *See supra* at 18-19.

This conflict and confusion—the natural product of the New Jersey unilateral judicial amendment rule—eliminates one of the principal reasons that states form compacts in the first place: to ensure uniformity and predictability of the compact's rules of engagement. As one commentator has observed:

> An interstate compact is the most effective instrumentality for enabling States to meet their responsibilities in a joint enterprise such as the control of a river basin or the operation of a public work. In the first place, it establishes one law for all of the States which are party to the compact. It is not only the law of each of them, but the law of all of them. It is true that uniform statutes in the States could create uniformity. The difficulty is that they could not maintain such uniformity in the sense that a compact can. The history of uniform laws is replete with examples of amendments by State Legislatures or interpretations by state courts that made them non-uniform. *A compact, however, cannot be amended by any party without the consent of all of them.* * * * Thus the compact is clearly the most effective by

> far; and in many senses it may be the only method of coordinating the work of agencies of several States. [Frederick L. Zimmermann, *Intergovernmental Commissions: The Interstate-Federal Approach, in* Frederick L. Zimmermann & Mitchell Wendell, *The Law and Use of Interstate Compacts* 122 (1976) (emphasis added).]

The judicial compact amendment process sanctioned by the New Jersey Supreme Court suffers from the same vice as the "uniform statute": it permits one state acting alone to alter the rules of engagement, as the New Jersey courts did below with respect to DRBA's core employment obligations, and thus undermines rather than advances the objective of uniformity.

b. The importance of this case is multiplied manifold by the fact that it involves the State of New Jersey. From the standpoint of geography, commerce, and demographics, New Jersey lies at the heart of a region of this country that is uniquely suited for interstate compacts. Indeed, New Jersey's natural harbor with New York has been called "the greatest harbor in the United States * * * of vital commercial importance to the whole country." Frankfurter & Landis, *supra,* at 697. On a slightly smaller scale, the Delaware River Basin—connecting New Jersey, New York, Pennsylvania, and Delaware—has for centuries proved to be an invaluable resource for promoting the flow of commerce both into and along the eastern seaboard. *See* Frank P. Grad, *Federal-State Compact: A New Experiment in Co-Operative Federalism,* 63 Colum. L. Rev. 825, 825-829 & n.4 (1963) (discussing "[t]he importance of the Delaware River Basin to the basin states and to the vast metropolitan complex it serves").

It is not surprising to find, then, that New Jersey has entered into a variety of different compacts with its neighboring states to address regional concerns that—because of the vast amount of commerce flowing through this region—are of genuine national import. These include

the Port Authority of New York and New Jersey, an interstate compact authority formed by New Jersey and New York with the consent of Congress to operate transportation facilities within and manage the flow of commerce through New York harbor, *see* S.J. Res. 88, ch. 77, Pub. Res. No. 17, 42 Stat. 174 (1921); the Delaware River Port Authority, an interstate compact authority formed by New Jersey and Pennsylvania with the consent of Congress to promote interstate transportation and trade in the Delaware River Basin area, *see* S.J. Res. 41, ch. 258, Pub. Res. No. 26, 47 Stat. 308 (1932); and the Waterfront Commission of New York Harbor, an interstate compact authority formed by New Jersey and New York with the consent of Congress to combat racketeering and other serious criminal activity in the Port of New York district, *see* Act of Aug. 12, 1953, ch. 407, Pub. L. No. 252, 67 Stat. 541.

Each of these interstate compact agencies is directly impacted by the decision below and, accordingly, has participated in these proceedings in an amicus capacity in support of DRBA. They face the same confusion and uncertainty as does DRBA in attempting to determine what general laws or policies will be applied to them by the New Jersey courts, notwithstanding the terms of their respective compacts prohibiting the unilateral imposition of additional duties or obligations upon them by any single compact state. This is perhaps especially true in the case of the Port Authority of New York and New Jersey, which, this Court has said, "exemplifies both the need for, and the utility of, Compact Clause entities." *Hess*, 513 U.S. at 40. The Port Authority must attempt to carry out its operations in the vitally important New York-New Jersey harbor area despite the directly conflicting decisions of the New Jersey Supreme Court in this case and the New York high court in *Malverty* over whether a bi-state compact authority may be subjected to

additional duties or obligations implied from similar laws or policies of both states.[19]

c. The importance of this case is further magnified by the frequency with which the question presented is certain to recur. Individuals routinely seek to hold interstate compact authorities to general state laws or policies, although—outside of New Jersey—they have been uniformly unsuccessful in such efforts. *See, e.g., Bailey* v. *Port Auth. of New York & New Jersey,* No. 40149-92 (N.Y. Sup. Ct. May 18, 1994) (unsuccessful attempt to subject interstate compact authority to state human rights laws), *aff'd,* 627 N.Y.S.2d 921 (N.Y. App. Div. 1995); *Salmon for All* v. *Department of Fisheries,* 821 P.2d 1211 (Wash. 1992) (same; state open public meetings laws); *Delaware River Port Auth.* v. *Commonwealth,* 585 A.2d 587 (Pa. Commw. Ct. 1991) (same; state ethics commission statute); *Malverty* v. *Waterfront Comm'n of New York Harbor,* 524 N.E.2d 421 (N.Y. 1988) (same; state anti-discrimination in hiring laws); *Seattle Master Builders Ass'n* v. *Pacific Northwest Elec. Power & Conservation Planning Council,* 786 F.2d 1359, 1371 (9th Cir. 1986) (same; state environmental laws); *Nardi* v. *Delaware River Port Auth.,* 490 A.2d 949 (Pa. Commw. Ct. 1985) (same; state employment disability

[19] Congress, in approving the compact establishing the Port Authority, recognized that the "territory in and around the port has become commercially one center or district," and that a "coordinat[ed]" effort on the part of New York and New Jersey to facilitate the movement of commerce "through the port of New York will result in great economies, benefiting the Nation as well as the States of New York and New Jersey." 42 Stat. at 174. Congress further recognized, moreover, that "such result [would] be best accomplished through cooperation of the two States by and through a joint or common agency," *i.e.*, the compact authority. *Id.* By bringing the New Jersey courts into direct conflict with the New York courts on the fundamental question whether additional obligations may be unilaterally imposed upon a bi-state compact authority, the New Jersey Supreme Court decision in this case directly threatens the continued cooperation of these states in pursuing this nationally important mission.

benefits laws); *C.T. Hellmuth & Assocs., Inc.* v. *Washington Metro. Area Transit Auth.*, 414 F. Supp. 408, 409 (D. Md. 1976) (same; state freedom of information laws); *Agesen* v. *Catherwood*, 260 N.E.2d 525 (N.Y. 1970) (same; state prevailing wage laws).

3. This case portends even more unsettling and far-reaching effects for interstate compacts in general as well as the regions they serve. As discussed, particularly in the past century, interstate compacts have flourished as a mechanism for addressing regional concerns, *see* note 8, *supra*, prompting one commentator to observe that "[t]here is no more potentially beneficial clause of the United States Constitution than [the Compact Clause]." *A Question of Federalism*, *supra*, at 19. This Court itself has recognized that compacts "perform high functions in our federalism," *Petty* v. *Tennessee-Missouri Comm'n*, 359 U.S. at 279, and has openly encouraged states to consider "the practical constitutional alternative provided by the Compact Clause," *Sims*, 341 U.S. at 27. *See also id.* (compacts "safeguard[]" "national" as well as "regional interests").[20]

The New Jersey high court ruling threatens the continuing utility of the interstate compact device. As Justice Garibaldi observed, the New Jersey rule will "lead to discord and a destruction of the purposes for which such bi-state agencies are formed." App. 20a (internal quotation marks omitted). *Cf. Tobin* v. *United States*, 306 F.2d 270 (D.C. Cir.) ("the suspicion of even potential impermanency would be damaging to the very concept of interstate compacts"), *cert. denied*, 371 U.S. 902

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[20] In a similar vein, Professor Wigmore observed: "Our forefathers devised a political expedient of profound significance when they inserted § 10 in Article I. One hundred years of national growth have now shown us the utility of it. We ought to use it freely, and thus save ourselves from the dilemma of economic disorder on the one hand and top-heavy federal centralization on the other." John H. Wigmore, *Uniformity of Law—Compacts Between States*, 19 Ill. L. Rev. 479, 479-480 (1925).

(1962). Indeed, the New Jersey rule eliminates the careful balance established by this Court's Compact Clause precedents and the Constitution to ensure that neither state may gain an upper hand in its dealings with the other or the compact authority, creates an uncertain and confusing legal landscape in which compact authorities must attempt to operate, and, as explained next, transforms the Compact Clause into a conflict *generating* rather than avoidance device.

III. THIS COURT SHOULD EXERCISE ITS SPECIAL "FUNCTION AND DUTY" TO RESOLVE INTERSTATE CONTROVERSIES OF THIS NATURE.

As with direct controversies between the states (*see* U.S. Const. art. III, § 2), this Court serves a special role in resolving controversies involving the construction of interstate compacts. As Justice Frankfurter wrote for a unanimous Court in *Sims*, "[a] State cannot be its own ultimate judge in a controversy with a sister State. To determine the nature and scope of obligations as between States, whether they arise through the legislative means of compact or the federal common law governing interstate controversies, is the *function and duty* of the Supreme Court of the Nation." 341 U.S. at 28 (internal quotation marks and citation omitted) (emphasis added).

The New Jersey Supreme Court decision will precipitate additional litigation in the field of interstate compacts, as compact authorities are forced to turn to this Court rather than the state legislatures or Congress as a result of the unilateral action of particular states' courts. Moreover, the decision will spawn direct controversies between the states within this Court's original jurisdiction, 28 U.S.C. § 1251, as states struggle to comply with conflicting rulings concerning the duties and obligations to which their compacts may be subjected. As the trial court below observed, judicial "intru[sion] in this area * * * is rather dangerous" and "raises conflicts * * * between the states," as well as within them. App. 51a. This Court inevitably will be asked by affected states to exercise its constitutional obligation to resolve such controversies.

Because of the direct conflict of authority and overriding importance of the question presented, this case plainly meets the Court's conventional criteria for certiorari. *See* S. Ct. Rule 10(b) & (c). Nevertheless, the fact that this case involves a dispute concerning the construction and governance of an interstate compact—bearing directly on the construction and governance of numerous other interstate compacts in the important New Jersey region, if not beyond—provides another, independently compelling reason to grant the writ. The Court should exercise its special "function and duty" (*Sims*, 341 U.S. at 28) to resolve interstate controversies of this kind, grant the writ, and decide the important question presented.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN G. ROBERTS, JR. *
GREGORY G. GARRE
HOGAN & HARTSON L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
(202) 637-5810

O. FRANCIS BIONDI
JON E. ABRAMCZYK
MORRIS, NICHOLS, ARSHT & TUNNELL
1201 North Market Street
P.O. Box 1347
Wilmington, Delaware 19899
(302) 658-9200
Counsel for Petitioner

Of Counsel:
WAYNE J. POSITAN
LUM, DANZIS, DRASCO, POSITAN & KLEINBERG, LLC
103 Eisenhower Parkway
Roseland, N.J. 07068
(201) 403-9000
* Counsel of Record

APPENDICES

APPENDIX A

SUPREME COURT OF NEW JERSEY

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, D.R.B.A. EMPLOYEES ASSOCIATION a/w INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, and OLIVER TWIST, JUDITH TWIST, KEVIN BAILEY, MARK P. DESORBO, DAVID R. OAT, DAVID A. CUSICK, JOHN M. BUNTING, A.R. SIMMONS, J. DAVID JOHNSON, ROY S. MACCULLOCH, DANIEL A. SLATER, SR., GERALD H. FOSTER, SR., and DAVID E. BARNETT on behalf of themselves and all other persons similarly situated,

Plaintiffs-Respondents,

v.

THE DELAWARE RIVER AND BAY AUTHORITY,

Defendant-Appellant.

Argued Sept. 10, 1996

Decided Feb. 11, 1997

The opinion of the Court was delivered by

POLLOCK, J.

This appeal raises two issues. The first is whether the New Jersey courts have jurisdiction over a Congressionally-approved interstate ("CAI") compact, specifically the Compact between the states of New Jersey and Delaware creating the Delaware River and Bay Authority (the "DRBA"). If so, the second issue is whether the laws of

New Jersey and Delaware are substantially similar concerning the right of public employees to negotiate collectively.

I.

The DRBA is a bi-state agency created by a compact between New Jersey and Delaware and approved by Congress ("the Compact"). *N.J.S.A.* 32:11E-1; *Del.Code Ann.* tit. 17, § 1701; *Pub.L.* 87-678, 76 *Stat.* 560 (1962). New Jersey and Delaware created the DRBA to advance their economic development and to improve the flow of traffic between the two states. *N.J.S.A.* 32:11E-1. Toward that end, the DRBA operates crossings between the two states including the Delaware Memorial Bridge and the Cape May-Lewes Ferry. *Delaware River and Bay Authority v. Internat'l Org., etc.*, 45 *N.J.* 138, 140, 211 *A.*2d 789 (1965) ("International Org."). Congress approved the DRBA Compact in 1962. Delaware-New Jersey Compact, *Pub.L.* 87-678, 76 *Stat.* 560 (1962). This case concerns the duty of the DRBA to negotiate collectively with its employees.

Among the many powers of the DRBA is the power in Article VII, Section (e) to:

> [A]ppoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.

When the DRBA hires employees, it provides them with a copy of its Personnel Manual. Article XIV of the Manual states:

> Upon accepting a position . . . with the Authority, an individual becomes a public or governmental employees . . . [i]n this connection, Authority employes have no right to incite, organize, conduct or participate in any strike, slowdown, or impediment to

> work against the Authority . . . and neither does the Authority have the obligation to engage in collective bargaining with its employees or their chosen representative as may be unusual [sic] and legally done in private individual employment.

Although the DRBA refuses to recognize any obligation to bargain collectively with International Union of Operating Engineers, Local 68, AFL-CIO ("Local 68"), it recognizes that its employees may join labor unions. Thus, Article XV of the Manual provides:

> The Authority fully recognizes the right of its employes to join a labor union of their own choosing and to organize, present and make known to the Authority any complaint or grievance which an employee might have in connection with employment. . . .

On August 25, 1993, the D.R.B.A. Employee Association (the "Association"), representing ninety-eight DRBA employees, voted to affiliate with Local 68, a labor organization. On August 7, 1993, Local 68 submitted a written request to the DRBA, seeking recognition as the collective-negotiation representative for those employees previously represented by the Association. The DRBA denied that request. Between July 19 and September 9, 1993, a majority of DRBA employees signed authorization cards designating Local 68 as their exclusive representative. On October 7, 1993, Local 68 requested recognition as the collective-negotiation representative. The DRBA did not respond.

Local 68 then instituted this action. The complaint alleged that the DRBA's refusal to recognize Local 68 as the collective-negotiation representative of certain DRBA employees interfered with the employees' rights under the New Jersey Constitution and the labor laws of New Jersey and Delaware. Finding that it lacked jurisdiction to hear the matter and to grant the requested relief, the Chancery Division dismissed the complaint.

The Appellate Division reversed, holding that the Chancery Division had jurisdiction and that it could grant the requested relief. Essential to that holding was the Appellate Division's conclusion that the labor laws of New Jersey and Delaware were complementary and parallel. We granted certification, 143 *N.J.* 311, 670 *A.*2d 1055 (1996) and now affirm.

II.

Article I, Section 10, Clause 3 of the United States Constitution (the "Compact Clause") empowers states to enter into interstate compacts. *U.S. Const. art.* I, § 10, cl. 3. The Compact Clause provides "[n]o State shall, without the consent of Congress, . . . enter into any Agreement or Compact with another state. . . ." *Ibid.* That language is broad enough to prohibit interstate compacts entered without the consent of Congress. In practice, the clause applies only to those compacts that might alter the political power of the affected states, and thus interfere with the supremacy of the United States. *Cuyler v. Adams*, 449 *U.S.* 433, 440, 101 *S.Ct.* 703, 707, 66 *L.Ed.*2d 641, 649 (1981) (holding Compact Clause does not apply to agreements not "directed to the formation of any combination tending to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States"); *Virginia v. Tennessee*, 148 *U.S.* 503, 519-21, 13 *S.Ct.* 728, 734-35, 37 *L.Ed.* 537, 543 (1893) (distinguishing those compacts not encroaching upon federal power from those that may encroach upon that power).

Through interstate compacts, states can establish bi-state agencies. On receiving the consent of Congress, the agency becomes a creature of the creator states and the federal government. *Hess v. Port Auth. Trans-Hudson Corp.*, 513 *U.S.* 30, 38-39, 115 *S.Ct.* 394, 400, 130 *L.Ed.*2d 245, 255 (1994). Generally speaking, the mission of such an agency is to address "interests or problems

that do not coincide nicely either with the national boundaries or with State lines [or] . . . interests that may be badly served or not served at all by the ordinary channels of National or State political action." *Ibid.*

Once sanctioned by Congress, a compact becomes a "law of the Union." *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 54 *U.S.* (13 *How.*) 518, 566, 14 *L.Ed.* 249, 269 (1851). "Because congressional consent transforms an interstate compact within [the Compact Clause] into a law of the United States, . . . the construction of an interstate agreement sanctioned by Congress under the Compact Clause presents a federal question." *Cuyler, supra*, 449 *U.S.* at 438, 101 *S.Ct.* at 707, 66 *L.Ed.*2d at 648. *Accord Carchman v. Nash*, 473 *U.S.* 716, 719, 105 *S.Ct.* 3401, 3403, 87 *L.Ed.*2d 516, 520 (1985). Thus, the consent of Congress transforms the States' agreement into federal law under the Compact Clause. *Cuyler, supra*, 449 *U.S.* at 440, 101 *S.Ct.* at 708, 66 *L.Ed.*2d at 649.

The DRBA argues that its Compact is a federal law and that only federal courts have jurisdiction to construe the compact. We must first determine therefore whether the DRBA Compact is a federal law. If so, the next question is whether compacts deemed federal laws are subject to the jurisdiction only of the federal courts or to the concurrent jurisdiction of state courts.

One of the primary goals of the Compact is to improve the flow of traffic between Delaware and New Jersey. *N.J.S.A.* 32:11E-1. Congress's interest in regulating interstate commerce renders the subject matter of the Compact appropriate for congressional legislation. *U.S. Const. art.* I, § 8, cl. 3. Thus, the DRBA qualifies as a "congressionally sanctioned interstate compact the interpretation of which presents a question of federal law." *Cuyler, supra*, 449 *U.S.* at 442, 101 *S.Ct.* at 709.

We recognize that the United States Supreme Court has original and exclusive jurisdiction in controversies between

two or more states. 28 *U.S.C.A.* § 1251(a). *See Kansas v. Colorado*, 514 *U.S.* 675, 115 *S.Ct.* 1733, 131 *L.Ed.*2d 759 (1995) (invoking original jurisdiction over suit filed by one state against another relating to terms of CAI compact); *Texas v. New Mexico*, 462 *U.S.* 554, 103 *S.Ct.* 2558, 77 *L.Ed.*2d 1 (1983) (same); *Guarini v. New York*, 215 *N.J.Super.* 426, 521 *A.2d* 1362 (Ch.Div.) *aff'd* 215 *N.J.Super.* 293, 521 *A.2d* 1294 (App.Div.1986) *cert. denied*, 484 *U.S.* 817, 108 *S.Ct.* 71, 98 *L.Ed.*2d 34 (1987) (refusing to assume jurisdiction over suit between two states, concluding that case was for exercise of original and exclusive jurisdiction by United States Supreme Court). Absent a controversy between two states or an express provision in a federal statute excluding concurrent jurisdiction, however, state courts may exercise jurisdiction over cases arising under federal law. *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 *U.S.* 473, 477, 101 *S.Ct.* 2870, 2875, 69 *L.Ed.*2d 784, 791 (1981); *Charles Dowd Box Co. v. Courtney*, 368 *U.S.* 502, 507-08, 82 *S.Ct.* 519, 523, 7 *L.Ed.*2d 483, 487 (1962). Nothing in the "federal system prevents state courts from enforcing rights created by federal law." *Courtney, supra*, 368 *U.S.* at 507, 82 *S.Ct.* at 522, 7 *L.Ed.*2d at 487.

For years, moreover, both federal and state courts have construed the terms of interstate compacts. *See e.g., NYSA-ILA Vacation & Holiday Fund v. Waterfront Comm'n of New York Harbor*, 732 *F.*2d 292, 298 (2d Cir.), *cert. denied*, 469 *U.S.* 852, 105 *S.Ct.* 175, 83 *L.Ed.*2d 109 (1984) (holding congressional approval of Waterfront Commission Compact transformed it into federal law); *Utah Int'l Inc. v. Intake Water Co.*, 484 *F.Supp.* 36, 42-43 (D.Mont.1979) (rejecting argument that federal jurisdiction over CAI compact construction cases is exclusive); *Eastern Paralyzed Veterans Ass'n, Inc. v. City of Camden*, 111 *N.J.* 389, 545 *A.*2d 127 (1988). At no time has the United States Supreme Court ruled that state courts do not have jurisdiction to construe CAI com-

pacts. Implicitly recognizing the powers of state courts, the Court has written that it has the final say in compact-construction cases even when the matter concerns a question on which a state court has already spoken. *Petty v. Tennessee-Missouri Bridge Comm'n,* 359 *U.S.* 275, 278-79 n. 4, 79 *S.Ct.* 785, 788 n. 4, 3 *L.Ed.*2d 804, 808 n. 4 (1959). On occasion, the Court has even remanded a compact-construction case to a state court for reconsideration. *State ex rel. Dyer et. al. v. Sims,* 341 *U.S.* 22, 32, 71 *S.Ct.* 557, 562-563, 95 *L.Ed.* 713 (1951) (holding West Virginia's obligation under multi-state anti-pollution compact did not conflict with state constitution, and remanding case to state court).

In *Hess, supra,* moreover, the United States Supreme Court recognized that bi-state agencies are creatures of both the creator states and the federal government. 513 *U.S.* at 38-39, 115 *S.Ct.* at 400. The Court held that a federal court suit is "not an affront to the Compact Clause entity." *Id.* at 41, 115 *S.Ct.* at 401. It follows that a state-court action likewise does not affront a bi-state agency.

This case presents a controversy between the DRBA and its employees, not one between two states. The case, therefore, does not invite the United States Supreme Court to exercise its original and exclusive jurisdiction. No express statutory provision prohibits the courts of Delaware or New Jersey from exercising jurisdiction over the DRBA. Unless a case involves a dispute between two states or an express statutory prohibition against the exercise of jurisdiction by the courts of either state, those courts may construe compacts concerning bistate agencies.

III.

When a state signs a compact, a court of that state may not construe the compact absent the Compact's recognition of that state's jurisdiction. *Ampro Fisheries, Inc. v.*

Yaskin, 127 *N.J.* 602, 610, 606 *A.*2d 1099 (1992), *cert. denied*, 506 *U.S.* 954, 113 *S.Ct.* 409, 121 *L.Ed.*2d 333 (1992). Whether a creator state unilaterally may exercise jurisdiction over a bi-state agency depends, then, on the terms of the compact. *Oklahoma v. New Mexico*, 501 *U.S.* 221, 235 n. 5, 111 *S.Ct.* 2881, 2289 n. 5, 115 *L.Ed.*2d 207, 225 n. 5 (1991); *Texas, supra*, 482 *U.S.* at 128, 107 *S.Ct.* at 2283, 96 *L.Ed.*2d at 114 (1987).

Here, the Compact provides, in pertinent part:

> Judicial proceedings to review any . . . action of the authority . . ., may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought. *N.J.S.A.* 32:11E-1, art. XV.

Thus, the Compact's plain language makes clear that the courts of New Jersey and Delaware have concurrent jurisdiction to review any action taken by the DRBA.

Over the last thirty years, the New Jersey courts have resolved many disputes, including labor disputes involving the DRBA. *See International Org., supra*, 45 *N.J.* 138, 211 *A.*2d 789 (affirming lower court's order enjoining DRBA employees and their union representatives from striking or otherwise picketing); *Delaware River & Bay Authority v. New Jersey Pub. Employment Relations Comm'n*, ("PERC"), 112 *N.J.Super.* 160, 270 *A.*2d 704 (App.Div.1970) (denying PERC's authority to order DRBA to collectively negotiate with union absent compact provision conferring such jurisdiction; pending case in Delaware court voluntarily stayed pending outcome of New Jersey Appeal); *aff'd*, 58 *N.J.* 388, 277 *A.*2d 880 (1971); *Gauntt Constr. Co./Lott Electric Co. v. Delaware River & Bay Auth.*, 241 *N.J.Super.* 310, 314-315, 575 *A.*2d 13 (App.Div.1990) (acknowledging that Article XV of the Compact provides courts of Delaware and

New Jersey with concurrent jurisdiction to hear claims involving the DRBA). We see no reason to reach a different result in the present case. Hence, we conclude that Article XV vests the courts of New Jersey and Delaware with concurrent juridsiction over the DRBA's labor disputes.

IV.

The next question is whether the Courts of New Jersey may grant the relief that Local 68 seeks, including issuance of an order requiring, among other things, that the DRBA recognize Local 68 as the collective-negotiation representative for employees that the Association previously had represented. A single state may not unilaterally impose additional duties on a bi-state agency. *Eastern, supra,* 111 *N.J.* at 398, 545 *A.*2d 127; *Bell, supra,* 83 *N.J.* at 424, 416 *A.*2d 829; *PERC, supra,* 112 *N.J.Super.* at 165-66, 270 *A.*2d 704. For example, DRBA employees do not have the right to strike, absent express approval by the New Jersey and Delaware legislatures. *International Org., supra,* 45 *N.J.* at 148, 211 *A.*2d 789. A legislative grant to public employees of full collective-negotiation rights, including the right to strike, "must be deliberately expressed and is not to be implied." *Id.* at 148, 211 *A.*2d 789.

Consistent with that premise, the Public Employees Relations Commission does not have jurisdiction to certify a union as the exclusive negotiating representative for DRBA employees. *PERC, supra,* 112 *N.J.Super.* at 166, 270 *A.*2d 704. Such jurisdiction "must be expressly given to [the Public Employees Relations Commission] by the Legislatures of New Jersey and Delaware, and not inferred by the courts." *Id.* at 165, 270 *A.*2d 704.

Consequently, we have declined to subject the Delaware River and Port Authority ("DRPA") to the requirements of New Jersey's Tort Claims Act ("Act"). *Bell, supra,* 83 *N.J.* at 425, 416 *A.*2d 829. A contrary result would

have granted the New Jersey Legislature power it did not possess, specifically, "the power to modify by unilateral action the waiver of sovereign immunity set forth in the bi-state compact." *Id.* at 424, 416 *A.*2d 829.

More recently, we have construed the DRPA compact to mean that substantially similar statutes adopted by Delaware and New Jersey could constitute complementary legislation. *Eastern, supra,* 111 *N.J.* at 400, 545 *A.*2d 127. For example, in *Eastern,* the issue was whether New Jersey's Law Against Discrimination ("LAD") *N.J.S.A.* 10:5.1 to -42, as well as its construction laws concerning handicapped access *N.J.S.A.* 52:32-5, applied to the DRPA. *Eastern, supra,* 111 *N.J.* at 395-96, 545 *A.*2d 127. We concluded that the New Jersey laws did not apply because "neither creator state [may] unilaterally impose additional duties, powers, or responsibilities upon the Authority," *Id.* at 398, 545 *A.*2d 127. To yield a more "just resolution" of the dispute, however, we remanded the matter to the Law Division to consider whether New Jersey and Delaware had jurisdiction based on complementary legislation within both states and implied consent. *Id.* at 400-01, 545 *A.*2d 127.

A bi-state agency, although subject to unilateral jurisdiction of a single creator state only when the compact recognizes the state's jurisdiction, "may be subject to complementary or parallel state legislation that does not intrude on the mission of the agency." *Ampro, supra,* 127 *N.J.* at 610, 606 *A.*2d 1099. Although a single state may not unilaterally impose its will on a bi-state agency, the creator states together may subject the agency to complementary or parallel state legislation. *Eastern, supra,* 111 *N.J.* at 400-01, 545 *A.*2d 127. Separate legislative acts are complementary or parallel if they are substantially similar in nature. *Id.* at 401, 545 *A.*2d 127. Legislation is substantially similar if the creator states evidence some showing of agreement in the laws involving and regulating a bi-state agency. *Id.* at 402, 545 *A.*2d 127. If the crea-

tor states do not enact complementary or parallel legislation, a court must make additional findings before concluding that the bi-state agency impliedly consented to regulation by one creator state. *Ibid.* Thus, a bi-state agency consents to a single creator state's exercise of jurisdiction when the agency either voluntarily cooperates with the creator state in the exercise of jurisdiction or agrees to meet the requirements of the law of that state. *Ibid.*

In *Bunk v. Port Auth. of New York & New Jersey*, 144 *N.J.* 176, 180, 676 *A.*2d 118 (1996), the issue was whether a Port Authority of New York and New Jersey ("PANN") worker was entitled to receive workers' compensation benefits under the same limitations as apply to other public employees in New Jersey. Resolving that issue required the determination whether the provisions of New York and New Jersey for awarding workers' compensation benefits were parallel and complementary. *Id.* at 185, 676 A.2d 118. Rather than "decide the exact contours of New York law," we observed that there was "evidence in the record, . . . that the provisions [were] somewhat similar." *Ibid.* Thus, we held that New Jersey could impose its workers' compensation laws on PANN to limit workers' compensation benefits of a public employee receiving a disability pension under New York law for the same injury. *Id.* at 180, 676 *A.*2d 118.

The Delaware courts follow a similar practice. In *Delaware River and Bay Auth. v. Carello*, 43 *Del.Ch.* 213, 222 *A.*2d 794 (1966), the Delaware Chancery Court interpreted Article VII(e) of the DRBA compact. *Carello* arose in 1966, two years before the New Jersey Legislature passed public employment legislation. Consequently, the Delaware court held that Delaware could not "unilaterally legislate so as to place burdens on the compact." *Id.* 222 *A.*2d at 798-99. The court continued, however, that the Delaware statute would "remain ineffective until concurrent legislative action of a similar nature is taken by the state of New Jersey." *Id.* at 799. The amendment of *N.J.S.A.* 34:13A-1 to -29, constitutes concurrent legis-

lative action. Finally, Article VIII of the Compact recognizes that the DRBA may be subject to obligations other than those that the Compact specifies. Article VIII provides that the DRBA shall not undertake additional duties and obligations "under the law of either State or Congress without authorization by the law of both States." Implicit in that provision is the premise that the two states may subject the DRBA to complementary or parallel legislation.

From the foregoing, we conclude that a bi-state agency, such as the DRBA, is subject to the law of New Jersey when the agency's compact expressly provides for unilateral action, both states have adopted complementary or parallel legislation, or the agency has impliedly consented to the exercise of single-state jurisdiction.

V.

The final issue is whether the laws of New Jersey and Delaware are complementary and parallel with regard to collective negotiations for public employees. Both states have enacted laws to prevent labor disputes between public employees, thereby assuring the orderly and uninterrupted operations of public employers. *N.J.S.A.* 34:13A-2; *Del.Code Ann.* tit. 19, § 1302. Both states grant public employees the right to join labor unions and to negotiate collectively through a representative of their own choosing. *N.J.S.A.* 34:13A-5.3; *Del.Code Ann.* tit. 19, § 1303. Finally, both states prohibit public employers from interfering with employees in the exercise of their rights and from refusing to negotiate in good faith with the employees' majority representative. *N.J.S.A.* 34:13A-5.4; *Del.Code Ann.* tit. 19, § 1307. The labor laws of New Jersey and Delaware, although not identical, are complementary and parallel. As a matter of public policy, the legislatures of both states have concluded that public employees should have the right of collective negotiation and that employers should not interfere with that right. In effect, the legislatures have modified the Compact. That

modification should not interfere with the DRBA's mission of advancing the economic development of the two states and improving the flow of traffic between them.

The dissent would deny DRBA employees the right of collective negotiation that the New Jersey and Delaware legislatures have conferred on all public employees. In denying that right, the dissent misperceives judicial recognition of the legislative enactments in both New Jersey and Delaware as an attempt by the judiciary to amend the compact contrary to the will of the legislature. (*Post* at 448, 688 *A*.2d at 576). Contrary to the dissent, we merely recognize that the New Jersey and Delaware legislatures have adopted a substantially similar policy concerning collective negotiations by public employees. Anomalous indeed would be the failure to apply so important a policy to an entity created by both states for their mutual benefit. Unlike the dissent, moreover, we do not believe that recognizing the right of DRBA employees to negotiate collectively will " 'lead to discord and a destruction of the purposes for which such bi-state agencies are formed.' " (*Post* at 454, 688 *A*.2d at 579) (quoting *PERC*, *supra*, 112 *N.J.Super.* at 166, 270 *A*.2d 704.)

Nor do we share the dissent's lack of confidence in the ability of the Chancery Division to interpret labor law. (*Post* at 454-55, 688 *A*.2d at 579-80). Historically, courts have exercised equitable power to resolve labor disputes. *See e.g., Local No. 11 of Internat'l Ass'n of Bridge, Structural & Ornamental Ironworkers v. McKee*, 114 *N.J.Eq.* 555, 169 *A*. 351 (Ch.Ct.1933) (appointing receiver to manage union's business until members could elect new officers); *Fryns v. Fair Lawn Fur Dressing Co.*, 114 *N.J.Eq.* 462, 168 *A*. 862 (Ch.Ct.1933) (holding Chancery Court had jurisdiction and that employer could not force employees to join a particular union). Even today, courts interpret labor law. *See* Douglas L. Leslie, ed., *The Railway Labor Act* 7 (BNA Books 1995) (describing courts as "gatekeepers" that define a labor dispute to determine whether to exercise jurisdiction, compel arbitra-

tion, or direct the union to the National Mediation Board). At some time, the New Jersey and Delaware legislatures may adopt legislation designating an agency to resolve "the myriad of issues that will arise during the course of collective negotiations." *Ibid.* Until such time as the legislatures make such a designation, however, the absence of such legislation does not deprive the Chancery Division of jurisdiction.

The judgment of the Appellate Division is affirmed, and the matter is remanded to the Chancery Division.

GARIBALDI, J., dissenting.

The Court has done what the Legislatures of New Jersey and Delaware have not—amend the congressionally-approved Interstate Compact (the Compact) between Delaware and New Jersey to require the Delaware River and Bay Authority (the DRBA) to negotiate collectively with its employees. I believe that the Court does not have the power to amend the Compact unilaterally or to impose additional duties and obligations, arising under New Jersey law, on the DRBA without Delaware's consent.

The majority finds that New Jersey has the power to amend Articles VII(e) and VIII of the Compact because the labor laws of New Jersey and Delaware, although not identical, are complementary or parallel with regard to collective negotiations for public employees. Although in some situations an agency may be subject to complementary or parallel legislation when the issue is limited to interpreting a state law or a state regulation, such legislation cannot and should not be used to repeal the Compact. Such a result comes from an unwarranted expansion of the *dicta* in *Eastern Paralyzed Veterans Association, Inc. v. City of Camden*, 111 *N.J.* 389, 545 *A.*2d 127 (1988), and will lead to confusion, uncertainty, and conflicts when the Superior Court, Chancery Division of New Jersey, attempts to decide how the differing labor laws of New Jersey and Delaware, as expressed in their parallel labor legislation, are to be effectuated.

I

The Court's ruling directly contravenes Article VII(e) of the Compact, giving the DRBA the power to

> [a]ppoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office *and all other conditions and terms of employment and retention.*
>
> [*N.J.S.A.* 32:11E-1, art. VII(e) (emphasis added).]

That provision is intended to keep matters concerning labor relations and collective negotiations in the hands of the DRBA.

The Court's opinion also directly contravenes Article VIII of the Compact that establishes additional powers that may be granted to the DRBA but limits the duties that may be imposed on it. That Article provides:

> For the purpose of effectuating the authorized purposes of the authority, additional powers may be granted to the authority by legislation of either State without concurrence of the other, and may be exercised within such State; or may be granted to the authority by Congress and exercised by it; but *no additional duties or obligations shall be undertaken by the authority under the law of either State or of Congress without authorization by the law of both States.*
>
> [*N.J.S.A.* 32:11E-1, art. VIII (emphasis added).]

Requiring the DRBA to negotiate collectively with its employees most certainly will impose "additional duties or obligations" on it.

II

Unless both states agree, it is well-established that a single-creator state may not unilaterally impose additional duties upon a bi-state agency when to do so would contravene the terms of the Compact. *Eastern, supra*, 111 *N.J.* at 398, 545 *A.*2d 127; *Bell v. Bell*, 83 *N.J.* 417, 424, 416 *A.*2d 829 (1980); *Delaware River & Bay Auth. v. New Jersey PERC*, 112 *N.J.Super.* 160, 165-66, 270 *A.*2d 704 (App.Div.1970) (*PERC*), *aff'd o.b.*, 58 *N.J.* 388, 277 *A.*2d 880 (1971). That principle was addressed by the Appellate Division in *PERC, supra*, a case also concerning labor relations of the DRBA. 112 *N.J.Super.* at 165, 270 *A.*2d 704. There, the court was asked to determine whether New Jersey's Public Employment Relations Commission (PERC) had jurisdiction to certify a union as the exclusive bargaining representatives for certain DRBA employees. *Id.* at 163, 270 *A.*2d 704. Holding that PERC did not have jurisdiction, the panel stated that such jurisdiction "*must be expressly given to* [PERC] by the Legislatures of New Jersey and Delaware, and *not inferred by the courts.*" *Ibid.* (emphasis added). To hold otherwise, the panel explained, would authorize one creator-state to impose its will and policies over the other state contrary to the terms of the Compact. *Ibid.* The court noted that under Article VIII of the Compact, the DRBA's powers were to be jointly controlled by both creator-states. *Id.* at 164, 270 A.2d 704.

The court further explained that because a bi-state agency is a single agency of the governments of both creator-states, neither creator-state may enact laws involving and regulating the agency unless both states agree. *Id.* at 165-66, 270 A.2d 704; *see also Bell, supra*, 83 *N.J.* at 424, 416 *A.*2d 829 ("[T]he New Jersey Legislature does not have the power to modify by unilateral action the waiver of sovereign immunity set forth in the bi-state compact; yet that would be the result were the Tort Claims Act held to apply to the DRPA."); *Gauntt Constr. Co./*

Lott Electric Co. v. Delaware River & Bay Auth., 241 *N.J.Super.* 310, 575 *A.*2d 13 (App.Div. 1990) (rejecting contention that public policy of both compacting states imposed duties on bi-state agency).

A careful reading of *Eastern, supra*, 111 *N.J.* at 389, 545 *A.*2d 127, discloses that the majority has expanded the scope of that decision. In *Eastern* we only decided whether the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1 to -42, the New Jersey Uniform Construction Code Act, *N.J.S.A.* 52:27D-119 to -141, and the New Jersey Handicapped Access Law, *N.J.S.A.* 52:32-42 to -16 applied to the Delaware River Port Authority (DRPA). We concluded that New Jersey laws could not be applied because the DRPA was a public corporate-instrumentality of both New Jersey and Pennsylvania. Hence, "neither creator state [may] unilaterally impose additional duties, powers, or responsibilities upon the Authority." *Id.* at 398, 545 *A.*2d 127. Additionally, the Court, citing *Bell*, concluded that New Jersey may not unilaterally exercise jurisdiction over the DRPA because to do so would violate the Compact, which made no provision for such jurisdiction. *Ibid.*

In *Eastern*, we also found that the DRPA's Compact did "not contemplate single-state jurisdiction in general." *Id.* at 400, 545 *A.*2d 127. The Court observed that "when Pennsylvania and New Jersey intended that local law would govern an area relevant to their compact, such as acquisition by eminent domain, *N.J.S.A.* 32:3-13.51, or consent for highway connection to the bi-state toll bridge, *N.J.S.A.* 32:3-13.55, they so specified." *Id.* at 401-02, 545 *A.*2d 127.

In addressing the Eastern Paralyzed Veterans Association's contention that the public policy of New Jersey mandated that the DRPA install elevators at its transit facility in Camden, the Court stated:

> This State lacks the sovereign authority to direct the DRPA to cede jurisdiction to New Jersey. . . . [S]o

too a single state cannot dictate the policy of a bi-state agency.

[*Id.* at 407, 545 *A*.2d 127 (citations omitted).]

Accordingly, the Court held that the State of New Jersey could not exercise unilateral jurisdiction over the DRPA, stating that compacting states may only be subjected to single-state jurisdiction when the compact itself recognizes such jurisdiction. *Id.* at 399, 545 *A*.2d 127. The DRPA's Compact, the Court made clear, did not contemplate that form of unilateral state jurisdiction. *Id.* at 400, 545 *A*.2d 127.

Remanding the matter to the trial court, the Court, in *dicta*, suggested, however, that "the theories of complementary regulations and implied consent, given a fuller exposition, may yield a just resolution of the dispute." *Id.* at 400-01, 545 *A*.2d 127. To succeed under that fact-sensitive, complementary-legislative theory, the Court stated, there must be "*some showing of agreement*" by the creator states to the enforcement of laws involving and regulating a bi-state agency. *Id.* at 402, 545 *A*.2d 127 (emphasis added). The best illustration of parallelism, the Court pointed out, is that DRPA employees are required to observe stop lights in New Jersey just as they are required to do so in Pennsylvania, even though neither state adopted such regulations within the framework of the compact creating the bi-state agency. *Id.* at 400, 545 *A*.2d 127 (citing *Nardi v. Delaware River Port Auth.*, 88 *Pa. Cmwlth.* 558, 490 *A*.2d 949, 952 n. 10 (1985)). That example indicates the type of uncomplicated situation that complementary laws were capable of addressing.

In *Ampro Fisheries, Inc. v. Yaskin*, 127 *N.J.* 602, 606 *A*.2d 1099 (1992); *cert. denied*, 506 *U.S.* 954, 113 *S.Ct.* 409, 121 *L. Ed.*2d 333 (1992), and *Bunk v. Port Authority of New York & New Jersey*, 114 *N.J.* 176, 676 *A*.2d 118 (1996), the facts were much different from those in this case. In those cases, the Court did not amend

the language of the Compact. In this case, however, Article VII(e), giving the Authority exclusive control over conditions and terms of employment, and Article VIII, providing that no state shall impose additional duties on another state without its consent, are, in effect, being directly overruled.

The Compact does not expressly give the compacting states the power to impose their labor laws on the DRBA, and the DRBA did not consent to the exercise of single-state jurisdiction in the area of collective negotiations with its employees. In fact, the evidence is to the contrary. That policy is confirmed by Article XIV of the DRBA's Personnel Manual (the Manual), which provides:

> Upon accepting a position . . . with the Authority, an individual becomes a public or governmental employee. . . . In this connection, Authority employees have no right to incite, organize, conduct or participate in any strike, slowdown, or impediment to work against the Authority . . . and *neither does the Authority have the obligation to engage in collective bargaining with its employees or their chosen representative as may be unusual* [*sic*] *and legally done in private individual employment.*
>
> [Emphasis added.]

In view of the language of Article VII(e) and VIII of the Compact, something more than mere complementary or parallel statutes is needed to repeal specific language in the Compact, or stated differently, to act as an implied repeal of the Compact's language. Similar public policy in two states is not sufficient to render one state's legislation applicable to a bi-state agency's employment practice. *Malverty v. Waterfront Comm'n of N.Y. Harbor*, 71 *N.Y.*2d 977, 529 *N.Y.S.*2d 67, 524 *N.E.*2d 421 (1988).

Permitting similar legislative acts of compacting states to amend a compact completely disregards the long-standing precedents requiring legislatures to agree expressly before a state can impose duties and obligations

on a bi-state agency. The majority's reasoning ignores the fact that when the Legislatures of New Jersey and Delaware sought to impose unilaterally-enacted state legislation on their bi-state agency, they expressly provided for it in the Compact. *Eastern, supra*, 111 *N.J.* at 401-02, 545 *A.*2d 127; *see also N.J.S.A.* 32:11E-1, Article XXII (imposing obligation on DRBA to comply with unilaterally-enacted environmental protection laws when planning, developing, constructing, or operating certain projects). The lack of a similar provision imposing unilaterally-enacted employment or labor laws on the DRBA must be viewed as an intent that such laws not apply.

III

Moreover, as explained in *PERC, supra*, 112 *N.J.Super.* at 166, 270 *A.*2d 704, "[t]o sanction such practice would lead to discord and a destruction of the purposes for which such bi-state agencies are formed." The panel made it clear that to impose New Jersey's labor policies on Delaware and its citizens, who are employed by the DRBA, would require that

> [t]he States of New Jersey and Delaware . . . *amend the compact and agree upon the issue* of whether [the DRBA's] employees may organize and engage in collective negotiations, what procedure should be utilized to implement this result, and where and how it should be accomplished. Unless, such is done, Delaware and New Jersey could each claim jurisdiction since both states have legislation permitting public employees to organize and negotiate. The confusion and conflicts which would follow if one state assumed jurisdiction, makes it clear that such was never intended by the compact.
>
> [*Id.* at 166, 270 *A.*2d 704 (emphasis added).]

The same problem will result from the majority's remand to the Chancery Division to effectuate the implementation of the two laws. Although the labor laws of New Jersey and Delaware are based on similar public

policies, they differ in the following manner: (1) each States' statute describes a different procedure for determining the employee-bargaining unit (*N.J.S.A.* 34:13A-5.3; *Del.Code Ann.* tit. 19, § 1310); (2) the provisions for determining unfair labor practices and enforcing the statutes are different (*N.J.S.A.* 34:13A-5.4; *Del Code Ann.* tit. 19, § 1308); (3) the New Jersey statute provides for arbitration of disputes whereas the Delaware statute does not (*N.J.S.A.* 34:13A-7); and (4) neither statute indicates in its declaration or purpose that it intended for the statute to apply to the DRBA.

Inevitably, the Court's decision will create uncertainty as to which state's law and administrative procedures apply to a given situation. Rather than acting as a court, the Chancery Division will be acting as an administrative agency interpreting labor law; a role for which the Chancery Court was not intended and for which it is not well suited.

IV

In conclusion, I find that complementary or parallel state laws cannot repeal the language of the Compact. The Legislatures of both States could readily enact concurrent legislation requiring the DRBA to enter into collective negotiations with its employees thereby designating an entity more appropriate than the Chancery Division to decide the myriad of issues that will arise during the course of collective negotiations. They did not, however, choose to follow such a course. As such, the courts of New Jersey lack the authority to unilaterally grant such power.

I would reverse the judgment of the Appellate Division.

For affirmance and remandment—Chief Justice PORITZ, and Justices HANDLER, POLLOCK, O'HERN, STEIN and COLEMAN—6.

For reversal—Justice GARIBALDI—1.

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-2228-93T1

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, D.R.E.A. EMPLOYEES ASSOCIATION a/w INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, and OLIVER TWIST, JUDITH TWIST, KEVIN BAILEY, MARK P. DESORBO, DAVID R. OAT, DAVID A. CUSICK, JOHN M. BUNTING, A.R. SIMMONS, J. DAVID JOHNSON, ROY S. MACCULLOCH, DANIEL A. SLATER, SR., GERALD H. FOSTER, SR., and DAVID E. BARNETT on behalf of themselves and all other persons similarly situated,

Plaintiffs-Appellants,

v.

THE DELAWARE RIVER AND BAY AUTHORITY,

Defendant-Respondent.

Argued February 22, 1995—Decided Aug. 2, 1995

Before Judges Long, A.M. Stein and P.G. Levy

On Appeal from Superior Court, Chancery Division, Cape May County

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PER CURIAM

Defendant Delaware River and Bay Authority (DRBA), which operates the Delaware Memorial Bridge and the Cape May-Lewes Ferry, was established in 1962 by the

Delaware-New Jersey Compact which was approved by Congress. Pub. L. No. 87-678, 76 Stat. 560 (Supp. 1990); *N.J.S.A.* 32:11E-1 to -12, *Del. Code Ann.* tit. 17, § 1701 (1985 & Supp. 1994).

Plaintiff DRBA Employees Association (Association) is on organization of employees of DRBA's Marine Division, affiliated with plaintiff International Union of Operating Engineers, Local 68. The individual plaintiffs are all members and employees of DRBA. On August 30, 1993, plaintiffs requested recognition of Local 68 as the representative of the employees who had so designated it and advised that the local would seek to schedule meetings to discuss 'grievances and proposals concerning terms and conditions of its members' employment."

DRBA's executive director responded, noting that only "36 of the Authority's 121 permanent employees at the Cape May-Lewes Ferry have designated the Association as their representative." While reiterating DRBA's "commitment to the right of its employees to join a labor union of their own choosing," he declined to recognize any "collective bargaining" agent on behalf of the employees. He concluded that the affiliation process, which was for purposes of collective bargaining, "has no relevance to the employment relationships which currently exist at the Delaware River and Bay Authority."

In October 1993, plaintiffs again wrote to DRBA requesting recognition:

> [A] majority of the marine employees, service and maintenance employees, and office clerical employees employed by the Delaware River and Bay Authority at the Cape May-Lewes Ferry have signed authorization cards authorizing International Union of Operating Engineers, Local 68, AFL-CIO to act as their exclusive representative for purposes of collective negotiations with respect to terms and conditions of employment.

When DRBA did not respond, plaintiffs filed a complaint in the Superior Court, Chancery Division alleging that DRBA's refusal to recognize the local "has interfered with the rights of its employees . . . to organize and present grievances and proposals through representatives of their own choosing" as guaranteed by Article I, Section 19 of the New Jersey State Constitution; the New Jersey Employer-Employee Relations Act, *N.J.S.A.* 34:13A-1 to -29; and the Right of Public Employees to Organize Act, *Del. Code Ann.* tit. 19, §§ 1301 to 1312 (1985 & Supp. 1992), *repealed by* Public Employment Relations Act, 69 Del. Laws c. 466 (1994).

Plaintiffs demanded that DRBA recognize the affiliation and the designation of Local 68; acknowledge the right of its employees to organize for purposes of collective negotiations; hold a secret-ballot election to determine whether Local 68 represented a majority of DRBA's employees within the appropriate bargaining unit, and announce the results of the election. If the majority of DRBA's employees selected Local 68 as their representative, plaintiffs asked that DRBA be required to negotiate in good faith "over terms and conditions of employment, and embody any agreement reached in a written agreement."

On October 18, 1993, the trial judge ordered DRBA to show cause why plaintiffs should not be granted the relief they requested. DRBA answered the complaint, denying its material allegations and moved to dismiss, asserting, among other reasons, a lack of subject matter jurisdiction insofar as neither the statutes of the compact states nor the New Jersey Constitution are applicable to DRBA "without the consent of the other state."

In support of the motion to dismiss, DRBA submitted affidavits from its executive director and an executive assistant explaining that its largest facilities and two-thirds of its 500 employees are located in Delaware. DRBA also argued that Local 68 is not a collective bargaining

agent and has never been recognized as such by plaintiffs. (By October 1993, ninety-two employees had designated the Association as their representative, with nine of them also designating Local 68).

The trial judge dismissed the complaint, citing *Eastern Paralyzed Veterans Ass'n v. City of Camden*, 111 *N.J.* 389 (1988), for the proposition that "New Jersey . . . lacks the sovereign authority to direct the DR[B]A to cede jurisdiction to New Jersey . . . . [A] single state cannot dictate the policy of a bi-state agency." The judge further determined that, even if there was jurisdiction, "I would have to dismiss this matter for lack of relief." A grant to public employees of the right to bargain or negotiate collectively "must be deliberately expressed and is not to be implied." The judge explained that it is not the court, but the "political process" that created the agency and "drives" its day-to-day decision-making, that should "drive the agency to recognize the realities of public employment as it applies in both states." We reverse.

The principles of federal constitutional law that mandate joint control and limit the jurisdiction of state courts over matters involving bi-state agencies like the DRBA are well established. Because each state relinquishes a portion of its sovereignty to enter into an interstate compact, the resulting bi-state agency is established with precisely limited powers over which the states may only exercise joint control. *See United States v. Bekins*, 304 *U.S.* 27, 38 *S.Ct.* 811, 82 *L.Ed.* 1137 (1938); *Delaware River & Bay Auth. v. New Jersey Pub. Employment Relations Comm'n*, 112 *N.J.Super.* 160 (App. Div. 1970), *aff'd*, 58 *N.J.* 388 (1971). "It follows that neither creator state can unilaterally impose additional duties, powers or responsibilities upon the Authority." *Eastern Paralyzed Veterans, supra*, 111 *N.J.* at 398 (quoting *Nardi v. Delaware River Port Auth.*, 490 *A.*2d 949, 950 (Pa. Commw. Ct. 1985)). It was this principle that the trial judge had in mind in declaring that he lacked jurisdiction over the DRBA. What he overlooked was the DRBA compact it-

self, which expressly sets forth the contours of state court jurisdiction. Article XV of the DRBA compact provides:

> Judicial proceedings to review any bylaw, rule, regulation, order or other action of the authority or to determine the meaning or effect thereof, may be brought in such court of each state, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such state might be brought.

By this provision, the DRBA compact ceded concurrent jurisdiction to the courts of New Jersey and Delaware. Either state may exercise such jurisdiction. *See Gauntt Constr. Co. v. Delaware River & Bay Auth.*, 241 *N.J. Super*, 310, 314 (App. Div. 1990). It is this language which eliminated the initial jurisdictional issue over which the trial judge stumbled and which distinguishes this case from *Eastern Paralyzed Veterans, supra*, which he cited. There, no similar compact provision existed. In sum, there is no question but that the trial judge had jurisdiction to determine the viability of plaintiffs' claimed entitlement to representation and collective negotiations arising out of the Delaware and New Jersey statutes.

He also erred in concluding that he lacked the power to grant plaintiffs the right to collectively negotiate because that right was not "deliberately expressed," presumably in the DRBA compact. The compact is not the only source of authority over a bi-state agency. Indeed, the DRBA compact itself recognizes that the DRBA may be subject to obligations beyond its four corners. Article VIII provides: "no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States." This language recognizes that a corollary of the proposition that neither state may individually impose its will on a bi-state agency is that the agency may be made subject to complementary or parallel state legislation. *Eastern Paralyzed Veterans, supra*, 111 *N.J.* at 398;

Nardi, supra, 490 *A*.2d at 951-52. Plaintiffs contend that complementary labor policies, as expressed in parallel legislation in New Jersey and Delaware, require DRBA to recognize the individual plaintiffs' affiliation with a labor organization and to collectively negotiate over the terms and conditions of employment.

This is not the first time this argument has been advanced. In *Delaware River & Bay Authority v. Carello*, 222 *A*.2d 794 (Del. Ch. 1966), defendant union petitioned the Delaware Department of Labor for certification. In enjoining these proceedings at DRBA's behest, the court pointed out that Article VII(e) of the DRBA compact (which is identical to that Article today) grants defendant "the power to fix and determine the qualifications, duties, compensation, terms of office, pensions, and all other conditions and terms of employment of its employees." *Carello, supra*, 222 *A*.2d at 797. Because, at the time of this decision in 1966, the Right of Public Employees to Organize Act, *Del. Code Ann.* tit. 19, §§ 1301 to 1312, (now, the Public Employment Relations Act, *Del. Code. Ann.* tit. 19 §§ 1301 to 1318 (Supp. 1994)) was "not supported by companion legislation in New Jersey," the court held that Delaware could not "unilaterally legislate so as to place burdens on the compact." *Id.* at 798-99. The court concluded that the Delaware statute "must remain ineffective until concurrent legislative action of a similar nature is taken by the State of New Jersey." *Id.* at 799. In 1968, the New Jersey Legislature enacted its version of the Delaware law, the New Jersey Employer-Employee Relations Act, *N.J.S.A.* 34:13A-1 to -29.

To be sure, the two state acts are not identical. However, both clearly give public employees the right to freely organize, to designate a representative to "negotiate in good faith" with the employer with respect to "terms and conditions of employment," and to execute resulting written agreements. *N.J.S.A.* 34:13A-5.3; *Del. Code Ann.* tit. 19, §§ 1301, 1302. Both schemes also prohibit strikes

by public employees. *N.J.S.A.* 34:13A-14; *Del. Code Ann.* tit. 19, § 1316; *see also Board of Educ. v. New Jersey Educ. Ass'n*, 53 *N.J.* 29, 36 (1968); *Franklin Township Bd. of Educ. v. Quakertown Educ. Ass'n*, 274 *N.J. Super.* 47, 54 (App. Div. 1994). DRBA argues that the differences between the acts eliminates their potential characterization as parallel legislation or complementary policies. Plainly, however, the legislation enacted in each compact state need not be identical in order to find that both have the same policy. Complementary and parallel legislation of a "similar" nature will do. *Carello, supra*, 222 *A.*2d at 799. Nor is there any requirement that in order to be applicable to a bi-state agency, the compact states must explicitly agree that the policy will so apply. In *Delaware River & Bay Auth. v. International Org. of Masters, Mates & Pilots*, 45 *N.J.* 138, 147 (1965), for example, our Supreme Court restrained a union from striking based on "the historic and widely prevailing policy against strikes by public employees," which was "equally applicable in both states." The Court did not cite any provision or expression of this policy in either or both states that made it specifically applicable to the DRBA.

Nothing in *Eastern Paralyzed Veterans,* cited by DREA, supports a contrary conclusion. There the Supreme Court addressed an effort by New Jersey to apply its substantive law to a bi-state agency project. *Eastern Paralyzed Veterans, supra,* 111 *N.J.* at 391. The Camden Housing Authority had agreed to construct a mass transit terminal for train service to be operated by the Port Authority Transportation Corporation, a subsidiary of the Delaware River Port Authority (DRPA), a bi-state agency of New Jersey and Pennsylvania. *Ibid.* The New Jersey Department of Community Affairs, which had to approve the construction plans, requested an elevator for the handicapped to satisfy state regulations. *Id.* at 394. Plaintiff, an association of handicapped persons, contended that the elevator was required under the New Jersey Uniform Construction Code Act, *N.J.S.A.* 52:27D-119 to -141, the

Handicapped Access Law, *N.J.S.A.* 52:32-4 to -16, the New Jersey Law Against Discrimination, *N.J.S.A.* 10:5-1 to -42, and by *N.J.S.A.* 52:27D-129b, which states that the Code applies to bi-state agencies. *Id.* at 395. The Supreme Court ultimately determined that New Jersey could not unilaterally impose duties or responsibilities on a bi-state agency unauthorized by the compact without "[s]ome showing of agreement by both states to the enforcement of the Uniform Construction Code at DRPA's New Jersey facilities." *Id.* at 402. DRBA reads this language too broadly and argues that it mandates an express agreement by the compact states as to the applicability of a particular law or policy. Not so. Read in context, it is nothing more than a rejection of the suggestion that by enacting *N.J.S.A.* 52:27D-129b, which purports to apply the construction code to bi-state agencies, New Jersey could take unilateral action toward the DRPA. Certainly, particular state laws and policies apply only by agreement. But that agreement can be either express or implied from "substantially similar legislative acts" in the compact states. *Eastern Paralyzed Veterans, supra,* 111 *N.J.* at 401.

We think that through the enactment of such legislation, New Jersey and Delaware have expressed their agreement that public employees, including DREA's, may organize and designate a representative to engage in collective negotiations on their behalf, excluding the right to strike. Indeed, the enactment of a parallel law by New Jersey was all the Delaware Court said was necessary, as long ago as 1966, to set the labor process urged by plaintiffs in motion. *Carello, supra,* 222 *A.*2d at 799.

DRBA argues that "jurisdictional collisions . . . would result from the inconsistent policies arising out of the implementation of different statutes and regulations by the Delaware Department of Labor and the New Jersey Public Employment Relations Commission (PERC),"

citing various differences between the two statutes. However, plaintiffs are not seeking to actually implement either state's regulatory scheme; they acknowledge correctly that neither the New Jersey PERC nor the Delaware Department of Labor has jurisdiction. *Delaware River & Bay Auth. v. New Jersey Pub. Employment Relations Comm'n*, 112 *N.J. Super.* 160, 165-66 (App. Div. 1970); *Carello, supra*, 222 *A.*2d at 798. Plaintiffs are seeking only to exercise their rights to collective negotiations in accordance with the policy of both states, under the jurisdiction of the Chancery Division, which will supervise labor relations when government agencies that normally do so, have no jurisdiction. *Johnson v. Christ Hosp.*, 45 *N.J.* 108, 112 (1965); *Comite Organizador de Trabajadores Agricolas v. Molinelli*, 114 *N.J.* 87, 89-90 (1989).

We reverse and remand the case to the trial judge to determine how the complementary labor policies of New Jersey and Delaware, as expressed in their parallel labor legislation, are to be effectuated.

Reversed and remanded.

APPENDIX C

[Filed Nov. 19, 1993]

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
CAPE MAY COUNTY

Docket Number: CPM-C-77-93

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68 AFL-CIO, D.R.B.A. EMPLOYEES ASSOCIATION a/w INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 68, AFL-CIO, and OLIVER TWIST, JUDITH TWIST, KEVIN BAILY, MARK P. DESORBO, DAVID R OAT, DAVID A. CUSICK, JOHN M. BUNTING, A.R. SIMMONS, J. DAVID JOHNSON, ROY S. MACCULLOCH, DANIEL A. SLATER, SR., GERALD H. FOSTER, SR., and DAVID E. BARNETT on behalf of themselves and all other persons similarly situated,

Plaintiffs,

v.

THE DELAWARE RIVER AND BAY AUTHORITY
Defendant.

CIVIL ACTION

ORDER

This matter having been opened to the Court by Carl D. Poplar, Esq., attorney for Defendant, The Delaware River and Bay Authority, before the Hon. John F.

Callinan, J.S.C. on November 19, 1993, in the presence of Kroll and Gaschter, attorneys for the Plaintiff, Raymond G. Heineman, Esq. of Counsel appearing, in Defendant's Motion to Dismiss Plaintiffs' Complaint, and the Court having heard the arguments of counsel, and good cause being shown;

IT IS ON THIS 19th day of November, 1993, ORDERED that Defendant's Motion to Dismiss Plaintiffs' Complaint is hereby GRANTED.

/s/ John F. Callinan
HON. JOHN F. CALLINAN, J.S.C.

Dated: November 17, 1993

APPENDIX D

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
COUNTY OF CAPE MAY

Docket Number CPM-C-77-93

INTERNATIONAL UNION LOCAL 68, *et al.*,
Plaintiff,

v.

DELAWARE RIVER AND BAY AUTHORITY,
Defendant.

TRANSCRIPT OF MOTION
AND ORDER TO SHOW CAUSE

Date: November 19, 1993

BEFORE:

HON. JOHN F. CALLINAN, J.S.C.

* * * *

[2] THE COURT: All right, in any order.

COURT CLERK: International Union versus Delaware Bay.

MR. POPLAR: Ready for defendant.

MR. HEINEMAN: Ready for plaintiff, Your Honor.

THE COURT: Come forward. Appearances please.

MR. HEINEMAN: Your Honor, for the plaintiffs Raymond Heineman of the firm of Kroll and Gaechter.

MR. POPLAR: Carl Poplar, I'm New Jersey counsel for the DRBA. Here's Mr. Frank Biani (phonetic) and John Abramsyk (phonetic). They're New Jer—they're Delaware counsels for the DRBA.

THE COURT: All right, Frank Biani and John Abramsyk?

UNIDENTIFIED ATTORNEY: Yes, Your Honor.

THE COURT: All right. This is a motion to dismiss the plaintiffs' complaints. Let me hear the factual scenario, counsel. Briefly.

MR. POPLAR: We did not initiate this, but basically, Your Honor, the Delaware River and Bay Authority is a bi-state authority. It's created by a compact, which is a law that's required to be passed by both the States of Delaware and New Jersey, and it has to be ratified by congress. In this particular instance the plaintiffs brought a lawsuit seeking to organize for a collective bargaining the employees at the Cape May facility. The basis for the plaintiffs' complaint is inequity, claiming that there is some jurisdiction of this court to [3] hear this case; that there is some statutory basis to hear this case; that there is some constitutional basis to hear this case. There is no constitutional provision that's applicable in New Jersey or in Delaware governing the Delaware River/Bay Authority. There is no statute that is applicable that permits the organization of the employees in Delaware or New Jersey.

THE COURT: Well, the handbook says that—that an employee may elect—

MR. POPLAR: Absolutely.

THE COURT: —anyone to represent him and file a grievance and represent him in front of the employer, including a labor union.

MR. POPLAR: That's correct.

THE COURT: But it does not indicate or go so far as to authorize the labor union to engage in a collective bargaining.

MR. POPLAR: That's correct.

THE COURT: I'd like to hear you on that, counsel.

MR. HEINEMAN: Your Honor, the handbook itself, in the union's view, is a statement that's derived from the earlier interpretations of Article 1, Paragraph 19 of the New Jersey Constitution. That was subsequently interpreted to provide that unions have a right to engage in collective negotiations, rather than collective bargaining, on behalf of their members. Collective negotiations would

entail the right to meet, the [4] right to enter into agreements, the right to have those agreements enforced. That law has been interpreted by the New Jersey Courts as applying to the New Jersey Constitution and as implementing the public sector labor law in the State of New Jersey.

THE COURT: So your position would be by inserting that provision in their handbook, they bring themselves under the jurisdiction of the New Jersey Courts?

MR. HEINEMAN: No, Your Honor. Our view is that by—by being an agency of the State of New Jersey, as well as the State of Delaware, Your Honor, it's clear they're a bi-state agency. But they are an agency of the State of New Jersey. Accordingly, as an agen—

THE COURT: Wait a minute. I'm not so sure I can leap to that conclusion. There—the argument can be that they are either a bi-state agency that has a life of its own and derives its power through mutual grants by each state on a collateral basis, or that they are merely subdivisions of the states that have got together to form an authority that derives is powers from the state legislature as such.

MR. HEINEMAN: Your Honor, it's—

THE COURT: You argue for the latter view.

MR. HEINEMAN: No, Your Honor. It's clear that they are a bi-state agency. In the plaintiffs' view, when the State of New Jersey created this and established its agency, it was [5] still bound by its own constitution. It was not free to alienate the rights and privileges of its citizens, including its employees whom its constitution granted the right to present grievances to their employer and the right to organize. It could not alienate those by entering into a bi-state compact. It has no authority to do so.

THE COURT: So you're taking the view that the employees of the bi-state authority deprived their rights from the state constitution of the respective states in which they live?

MR. HEINEMAN: That as well as the fact that each state has—

THE COURT: So the case may arise where Delaware employees might have certain rights that are not coincidental with New Jersey employees. Wouldn't that be a real possibility there?

MR. HEINEMAN: If it were in the constitution it would be, Your Honor, and, frankly, that's a—I mean I don't think we have to cross that bridge because that's not the case at the moment.

THE COURT: Well, this is—this is an authority that deals in bridges, and I have to cross that bridge when I—when I make a decision here. I think that I'm getting very dangerously close to—to going outside the sphere of this court's authority when I enter an order that affects a bi-state authority.

[6] MR. HEINEMAN: Your Honor, the Delaware Constitution is in no way repugnant or different or in conflict with the rights granted in the New Jersey Constitution.

THE COURT: You say that. You say that.

MR. HEINEMAN: The Delaware court, Your Honor, has—the Delaware court in *Corrella* (phonetic)—*DRBA versus Corrella*—recognized that in Delaware public sector employees have the right to bargain and that law is constitutional in Delaware.

THE COURT: Has anyone ordered the bi-state authority—any court—to engage in collective negotiations?

MR. HEINEMAN: No, Your Honor.

THE COURT: This is coming from lowly Cape May County for the first time? Case of first impression?

MR. HEINEMAN: The—yes. The other authorities—the New York Port Authority, it is specifically built into the compact. The Delaware River Port Authority, operating the bridges crossing between New Jersey and Pennsylvania, has voluntarily entered into collective negotiations.

THE COURT: Isn't that the point though? They do it voluntarily. They do it for public reasons. They do it to satisfy their constituency. But they do it as a bi-state agency.

MR. HEINEMAN: That's true, Your Honor.

THE COURT: And they don't do it under the coercion of [7] any particular state's court.

MR. HEINEMAN: Well, Your Honor, our view is that we could just as easily go into the state courts of Delaware, the Chancery Courts rather than the administrative agency, to have a similar order entered. Both based on the New Jersey Constitution and because both states by enacting substantially similar legislation have agreed that the policies' of both states and the procedures and statutes of both states will apply to this authority. That is a case of first impression clearly, Your Honor.

MR. POPLAR: Judge, respectfully, I don't think that this case is close. Judge O'Hern in the *PERC* case—the *DRBA/PERC* case—suggested there's a complex issue that they didn't have to reach in that case because they had a contract. In that particular case, he suggested that maybe even a state court, when we're dealing with a bi-state compact, doesn't even have jurisdiction because it's exclusively a federal question. But in that case, because they were dealing with contract law and consent to contract, they didn't have to reach that particular issue. On one hand plaintiffs' counsel is trying to do some kind of interpretation of a contract. He's trying to by indirect methods say that the amalgamation of various nonsimilar, nonexact statutes are a de facto amendment to a compact, and that, Your Honor, I would submit is a non sequitur. Plaintiffs' counsel in his briefs—

[8] THE COURT: It's not a non sequitur. If it could be—if it could be synthesized into a solid legal argument, it would be a wonderful point.

MR. POPLAR: It's attractive and it's enticing because the politics or the desire to labor organizations to have certain rights. Judge Halpern in his opinion—in his Appellate Division opinion regarding the DRBA, which was affirmed by the Supreme Court in the *Pecurian* (phonetic) opinion, said the procedure is there has to be an amendment to a compact before you can have some kind of action or activity, and this—

THE COURT: What would be—what would be the impetus for a bi-state authority to amend that compact to expose itself to collective bargaining?

MR. POPLAR: I don't understand what you mean, what would be the impetus—

THE COURT: What would cause it to do that? They meet one day and say let's open ourselves up for collective bargaining, it sounds like a good idea. Like junk bonds.

MR. POPLAR: If the political process—if the political process is that both the commissioners in Delaware and the commissioners in New Jersey and the governors of those two states agree that there should be an amendment to the compact, that there should be a permission for the employees to enter into a collective bargaining agreement, it could be done.

THE COURT: So the impetus would be a political one?

[9] MR. POPLAR: Well, in order to get legislation passed. And I don't mean political with a large "P", I mean with a small "P".

THE COURT: Right.

MR. POPLAR: I don't mean partisan, republican and democratic politics. I mean the political decision that it would be in the best public interest to permit and the best societal interest. Counsel in his brief suggested or stated that we, the DRBA, accept the applicability of the New Jersey constitutional provision, talking about private sector, collective bargaining and pri—public sector negotiations and proposals. We don't concede and have not concede—conceded that that New Jersey constitutional provision is applicable to this DRBA. The fact that we in our bylaws have stated that the employees have a right to designate themselves, or another person, or another entity as a representative to submit grievances and proposals is something that we chose to do. If we did not choose to do it, there would be a question as to whether or not the employees could even present grievances and proposals. But we chose to do it and you don't have to reach that

interest—that issue. The high water mark of the rights of the employees and this particular client, the DRBA, a bi-state authority, is what's in the bylaws properly promulgated by the ocmmissioners? Let me give you a suggestion, a hypothetical what may happen if Your Honor rules for the plaintiff, and I submit that Your Hon[10]or should not rule for the plaintiff. If Your Honor rules for the plaintiff and you direct the DRBA to permit an election, and you direct the DRBA, if there is a successful election, to enter into collective bargaining, and you say I want you to honor that contract, or whatever—or I direct you to argue, and then we enter into a piece of paper, and the governor of Delaware says I don't like it, I veto it, it doesn't work. Because in order for there to be action by the authority, you have twelve commissioners, six from New Jersey, six from Delaware, four of Delaware's commissioners have to agree and four of New Jersey's commissioners have to agree. That's a whole bunch of people. That's four—you know, if there's only three showing up at a meeting, you can't have action. If they agree, it's not done yet. You have to wait ten days, because the governor of New Jersey and the governor of Delaware has a right of veto of their action or activity, and that's in the compact. That's a law that was passed by both sides. That's a law that was ratified by congress.

THE COURT: What if the—the plaintiff here went into federal court?

MR. POPLAR: If they went into federal court, there may be a better foundation for jurisdiction cause they're dealing with compact. That is jurisdiction over the parties. Then the question becomes whether or not they have any law that permits the courts to order the authority to do something that the [11] bi-state compact didn't authorize and that the governors of each state didn't authorize, and then the answer to that is a federal judge, because of the separations of power, does not have the right to do it.

THE COURT: Well, it would be a state's rights issue, would it not?

MR. POPLAR: Well, no, it would not be a state's rights issue.

THE COURT: What—the reservation of powers?

MR. POPLAR: No. Respectfully, Your Honor, in this—the bi-state compact and the bi-state authority is not a state agency. It can't be argued to be a state agency. It can't be argued to be a subdivision within the state. It's a sui generis or an unique type of entity. When we look at *PERC* and we look at—

THE COURT: I don't think that's the way a federal court would parse that question. I think the federal courts would consider that creature a derivation of collective state action, and would then analyze it from a reservation of powers situation. I don't have to reach that. That's not the kind of decision that this court makes.

MR. POPLAR: That's when we get way down the line. The question is whether or not there is jurisdic—in the first instance, as we set forth in our brief, is there subject matter jurisdiction for this court, a New Jersey court, here in [12] Cape May County? Our position is there is not subject matter jurisdiction. There is no statute. Clearly *PERC* doesn't apply, there's no dispute. The comparable legislative enactment in Delaware doesn't apply. The New Jersey Constitution does not specifically apply. When we're talking about what this plaintiff is trying to do, they're trying to take a minimum number of employees, who apparently work in New Jersey, the minority number of employees who work for the Delaware River and Bay Authority, and create some kind of contractual collective bargaining rights for them that would directly impact on the vast number of employees who reside and work in Delaware. Is there jurisdiction—subject matter jurisdiction? No, there is not. Is there a statutory predicate? No, there is not. Is there a constitutional predicate? No, there is not. It's—what the plaintiff apparently seems to do is, to look at a Delaware statute, look at a New Jersey statute and say well, they say sort of the same thing. They sort of give certain rights to public employees to do collective

bargainings, although the statutes aren't identical. When you look at how those statutes are administered, they're administered differently. PERC has its own set of rules and regulations and the Department of Labor in Delaware has its own set—

THE COURT: You don't fault the attorney for doing that. That's how things get changed, do they not?

MR. POPLAR: There is no question that plaintiff's [13] lawyer has made a very enticing and attractive argument. And I agree that it's attractive and I agree that it's enticing, but I don't agree that it's legal.

THE COURT: All right. Let me hear from your adversary.

MR. HEINEMAN: Thank you, Your Honor. Counsel raises and interesting question, which is, what happens if the governor of one of the states vetoes? And that gets to the root, I think, of the concept of collective negotiations. Collective negotiations in both states, Your Honor, in Delaware and in New Jersey are both subject to overall regulation statute of the agency and of the states. So counsel's hypothetical, under the compact, if a governor were to veto the collective negotiations agreement, it would fall because you can't enter into a collective negotiations agreement based on the law of either states—

THE COURT: Now,—

MR. HEINEMAN: —that counteracts the state regulation. You can't do it.

THE COURT: Your—your clients basically work in Cape May?

MR. HEINEMAN: There are members of the DRBA association in both states, but yes, we are seeking solely to organize the Cape May Lewes Ferry.

THE COURT: On the other side of the bridge in—

MR. POPLAR: Lewes.

[14] THE COURT: Where is that?

MR. POPLAR: Lewes.

MR. HEINEMAN: Lewes Delaware, Your Honor.

THE COURT: No. no. That's not a bridge, that's a—

UNIDENTFIED ATTORNEY: New Castle.

MR. POPLAR: New Castle, rather.

MR. HEINEMAN: Oh, New Castle.

THE COURT: And then on the other side in New Jersey where they pick up all the drug runners, what's the name of that town?

MR. HEINEMAN: Pennsville. Pennsville, Your Honor.

MR. POPLAR: Cocaine alley, Judge.

THE COURT: Right. What happens when those people want to organize and they go before a judge in that county and the judge says no, I don't interpret it that way? The judge in Cape May is wrong. You can—you people organize in Cape May, but you can't organize here in this county.

MR. HEINEMAN: Your Honor, that's a—I mean it's possible that two Chancery Court Divisions could have conflicting interpretations and it would have to be resolved obviously, I think, at the Appellate level. But I think that my view, Your Honor, based on the constitution and on the substantially similar legislative actions of both states, is that that would not hapen. I mean I take issue the—with counsel's view of the New Jersey Constitution as not being applicable. The New [15] Jersey State Constitution, the rights and privileges section, which includes Article 1, Section 19, are inalienable rights. A state cannot contract those rights away. Your Honor.

THE COURT: Oh, I know I have some curent jurisdiction with federal courts on civil rights matters. But—but why wouldn't this issue, which seems to be—have an overriding civil rights overtone, two states getting together and maybe impacting upon the civil rights of—of employees, why wouldn't that be better brought in federal court?

MR. HEINEMAN: Well, Your Honor, there's the question of the compact, but the compact in federal jurisdiction does not rate—does not rise to the relationships of the states with their employees, except insofar as it

would come from the 14th and the 5th Amendments, and these rights—the rights to collective negotiations do not fall within the rights of the 5th and 14th Amendments. So there—the rights of collective negotiations for public employees are purely a creature of state law. In the plaintiffs' view, we have to come into state court. Now the Chancery—the Chancery Courts of the State of New Jersey have taken jurisdiction over labor disputes that are not subject either to the NLRB or, if you look at the Association of Retarded Citizens case in Atlantic County, the court there, while saying go to *PERC*, see what they say, says if *PERC* doesn't have jurisdiction and the NLRB doesn't have jurisdiction, we have jurisdiction. The Chancery Courts in the State [16] of Delaware clearly have subject matter jurisdiction. When this authority in the '50's in the *Masters, Mates and Pilots* case sought to enjoin picketing, a labor dispute, they came into the Chancery Courts of the State of New Jersey. The sole basis was Article 1, Section 19. That's what that entire case discusses, whether public employees have the right to strike within the meaning of Article 1, Section 19. Now I'll admit that when you carefully parse each sentence, the court never says these employes are under the DRBA, or under the New Jersey Constitution. But the entire discusion is in terms of that, Your Honor. When you look at the personnel manual, you'll note that every officer of the DRBA, whether in New Jersey or Delaware, swears to uphold and support the constitutions of both Delaware and New Jersey. The *Corrella* case in Delaware discusses solely for New Jersey law the constitution. That case predates the *PERC* act. When I saw counsel's brief that they were not covered by the constitution, frankly, Your Honor, I was flabbergasted. I had assumed all along from all the cases that have arisen on this authority that they were under the constitution and my view, Your Honor, and the plaintiffs' view—

THE COURT: What constitution? The constitution—

MR. HEINEMAN: The Constitution of the State of New Jersey—

THE COURT: And the constitution—

MR. HEINEMAN. —and the Constitution of the State of [17] Delaware both govern.

THE COURT: And in areas where they conflict, what constitution?

MR. HEINEMAN: In areas where they conflict the authority—the states—if they were rights and privileges, the authority could not act in that area, Your Honor, and would have—that would have to be resolved, and, frankly, it hasn't happened. The rights and—

THE COURT: But where would it be resolved? That's my question.

MR. HEINEMAN: Your Honor, I don't know,—

THE COURT: All right.

MR. HEINEMAN: —to be quite frank, because the rights and privileges under Article 1 of the New Jersey constitution are all fundamental human rights and they—none of those conflict with Delaware. The authority does have police power and has recognized that for purposes of that power the procedures of either state can apply. So those constitutional protections apply. But, Your Honor, I think it's clear that a state in entering into this contract cannot abrogate the constitutional rights, the rights and privileges of its own citizens and that's—if you accept counsel's arguments, that's exactly what the State of New Jersey has done. In entering into this compact, if counsel is correct, the State of New Jersey has waived the rights of its citizens and the rights of its own [18] employees to engage in collective negotiations.

THE COURT: Haven't they compromised themselves in other areas when—when they engage in these bi-state or tri-state compacts? Don't they—

MR. HEINEMAN: Correct, Your Honor. They have given up their own sovereignty,—

THE COURT: Right.

MR. HEINEMAN: which is their power and which they have the ability to do under the U.S. Constitution

and under their own, but they cannot surrender the rights and privileges of their own employees.

THE COURT: But can they surrender their right to have to defend those—those rights and privileges of their own employees?

MR. HEINEMAN: No, Your Honor, I—our position is that they cannot. They are bound by their constitution that these are inalienable rights. The citizens of the State of New Jersey, the employees of the State of New Jersey have these inalienable rights. The state cannot contract them away.

THE COURT: All right.

MR. POPLAR: Judge, I'm not sure what rights we're talking about. Under constitutional provision Article 1, Section 9, it is clear that public employees do not have the rights of collective bargaining.

THE COURT: Except those rights that are granted by [19] the state.

MR. POPLAR: Except rights that are granted not by the constitution, but by subsequent legislative enactment and—

THE COURT: Do you disagree with that?

MR. HEINEMAN: Yes, Your Honor.

THE COURT: I see you geting very antsy about that.

MR. HEINEMAN: Your Honor, counsel discusses what we call collective bargaining. I agree public employees in the State of New Jersey do not have the right to engage in collective bargaining. We're talking about collective negotiations. The courts of the State of New Jersey—

THE COURT: The distinction being?

MR. HEINEMAN: The right to strike, the right to engage in—the right to have your employer pass a law, regulation or statute which eliminates a term and condition of employment. In the private sector, Your Honor, if I were working for a private sector company, my employer cannot contract or decide I'm going to do this. I would have the right to challenge that through collective

bargaining. In the public sector, Your Honor, if the State of New Jersey or the State of Delaware, for that matter, sets up a civil service system, mandates a health insurance system, mandates a pension system, as a public employee, I would have no right to negotiate those. That's set by regulation.

THE COURT: Or the right to strike.

[20] MR. HEINEMAN: Or the right to strike. So—in the Delaware verbiage collective bargaining is the same as New Jersey's collective negotiations. It's just the New Jersey language, I think is more precise.

THE COURT: All right.

MR. HEINEMAN: And the New Jersey Courts, if you look at *Porcelli versus Titus,* if you look at *Lullo,* if you look at the state counsel cases, on my brief, while they clearly are employees only within the State of New Jersey, the state courts have said these are the rights, the rights and the—the New Jersey Employer/Employee Relations Act are the rights under the New Jersey State Constitution. They are one and the same, Your Honor, at this point.

THE COURT: And the collective negotiations that you talk about, mandated by the states, have their own procedural provisions?

MR. HEINEMAN: Correct. The admin—

THE COURT: They've remedies in the event that you're dissatisfied with the rulings below?

MR. HEINEMAN: The—in Delaware, Your Honor,—

THE COURT: Your right to appeal within limits.

MR. HEINEMAN: The—you would have the right. There is a—the state sector bargaining law establishes an administrative agency and then the right to go into Chancery Court. My understanding of the unfair labor practice is you would go [21] right in the Chancery Court.

THE COURT: It's not too different from New Jersey. But the point is, there is machinery in place.

MR. HEINEMAN: Correct, Your Honor. However, it's crystal clear at this point that neither of those admin-

istrative agencies have jurisdiction. So then we're left with statutory rights of a substantially similar nature—

THE COURT: And no—and no procedural—

MR. HEINEMAN: And no administration.

THE COURT: —mechanism to exercise.

MR. HEINEMAN: And that's when you have to go back in plaintiffs' view to the *Christ Hospital* case, the *Association of Retarded Citizens* case and come to Chancery. And that's why we're here.

THE COURT: So if I order—if I order the authority to do this, they have to—without a procedural mechanism in place, they'd have to come up with one?

MR. HEINEMAN: Your Honor, the Jersey Court cases have all ordered elections conducted by a private sector mechanism. Generally it's been the American Arbitration Association.

THE COURT: I'm not—I'm not only talking about that. I'm talking about election, negotiations, impasse.

MR. HEINEMAN: The Chancery Courts—there are —there's a body of case law which has been developed by the Chancery Courts on all those issues.

[22] THE COURT: All right.

MR. HEINEMAN: They have looked to the law of—in New Jersey cases, the law of New Jersey and the federal experience. The law—the judicial law of the State of Delaware, Your Honor, is in all respects the same as that in New Jersey. With deference to counsel's arguments that there are differences in the wording, I have found no conflict in the case law and interpretation of Delaware and that of New Jersey and everything I have seen is that they treat in all respects the general rights, the specific procedures that we would be asking this court, they are the same in both states.

THE COURT: All right. One last word now.

MR. POPLAR: Judge, counsel seems to amalgamate collective bargaining and collective negotiations. There is nothing in Article 1, Section 19 that permits either collective bargaining or collective negotiations by the public employees. That can only be done through an—the enact-

ment of PERC, which clearly doesn't apply to the authority. The cases that were referred to by counsel about this Chancery Court mechanism are private sector labor cases. This is a public sector case. In order for this court to grant the relief that counsel is seeking, Your Honor has to reverse at least two New Jersey Supreme Court decisions, it has to amend by judicial fiat a bi-state compact that needed the signature of two state legislatures, two governors and congress and a signature by the presi-
[23] dent. Our particular compact was amended recently, in 1990. In that amendment to the compact there was no suggestion or change of any desire that anybody other than the executive director should have the authority regarding employment and conditions for employees. This, Your Honor, is a case not of first impression. It has been addressed. What it is, it's a case of subsequent impression seeking this court to change existing and absolutely unrefutable law.

MR. HEINEMAN: Your Honor, if I may be heard on that point?

THE COURT: Yes.

MR. HEINEMAN: Your Honor, it is clear that the compact was recently amended. However, I disagree that this point has been raised before. When you look at the *PERC* case, the narrow issue the court focused in, and it tells you in the beginning of that case, Your Honor, that it is a narrow issue, is the jurisdiction of *PERC* to unilaterally on behalf of the State of New Jersey assert jurisdiction. That's the narrow issue. The issue of substantially similar or the issue of the applicability of the New Jersey Constitution and the inherent jurisdiction of the Chancery Court has never been addressed. Now when plaintiffs look at the legislative history, we see a Delaware Court which says no jurisdiction for the Department of Labor, but if New Jersey enacts substantially similar legislation, then the general rights—the law—that law will ap-
[24] ply, and we look at New Jersey law that say there's no jurisdiction. There's subsequent case law where New Jersey though adopts the substantially similar theory of

the Delaware Courts in *Corrella*. So this concept of going into Chancery Court has never been addressed, Your Honor. For all we know it is as valid a point to say the legislature, when it refused to—when it did not amend to provide jurisdiction of either state agency, was comfortable that the employees would have the constitutional right as citizens of New Jersey and as public employees of New Jersey to come into Chancery to seek assertion and protection of their fundamental and inherent right to engage in collective negotiations. So I find counsel's argument unpersuasive. It's never been raised before. This is a case of first impression.

THE COURT: All right. I'm ready to—

MR. POPLAR: Judge, if I can just refer you to a page on one of the opinions?

THE COURT: No, I'm ready to decide.

MR. POPLAR: Fine, Your Honor.

THE COURT: The Delaware River Port Authority is not the agency of a single state, but rather a public corporate instrumentality of both New Jersey and Pennsylvania (sic). And since interstate compacts are not a product of a single state, no creative state can unilaterally impose additional powers, duties or responsibilities that infringe on the contract— [25] compact. When a compact, however, recognizes the individual and unilateral jurisdiction of a compact state, then that compact may be subject to a single state's jurisdiction. But that's not the case here. Some courts have held that a state agency to be subject to complimentary or parallel state legislation, that does not intrude or infringe upon the mission of the agency or their ability to perform that mission, and, for example, there are cases that hold that bi-state agency employees must observe stop lights in New Jersey, just as in Pennsylvania, even though neither state has adopted such regulations within the framework of the compact. But forcing the agency into collective bargaining, or collective negotiations as you put it, cannot be compared to stopping at lights. Collective negotiations would be intru-

sive to running the DRPA. Cases have held that the—a particular state, and New Jersey for example, lacks the soverign authority to direct the DRPA to cede jurisdiction to New Jersey. And the Supreme Court of the United States have held in appropriate cases that a single state cannot dictate the policy of a bi-state agency. So it is clear that the New Jersey Courts cannot, at least—certainly not at the trial level, dictate the policy of the bi-state agency such as the DRPA based on the Supreme Court ruling, the New Jersey Court rulings that I referred to before in *Gauntt*. It appears that this court has no choice but to dismiss the case for lack of jurisdiction. But even if this court was to [26] hold, or were to hold that this—there was jurisdiction in this case, I would have to dismiss this matter for lack of relief. It has been held in many cases that to grant a—that a grant to public employees, such as in this case, of full collective bargaining rights or collective negotiation rights without the right to strike must be deliberately expressed and is not to be implied, and although the authority has broad powers to enter into contract, the New Jersey Supreme Court has held that this has no relation to any obligation on the part of the authority to enter into collective negotiations in its full sense. The authority could not even be required to recognize or collectively negotiate with the exclusive bargaining representatives selected through the commission, and there are cases on that. I have to say that I am persuaded emotionally by your arguments, that somehow a decision should be reached by somebody on whether there's going to be collective negotiations or whether the states are going to tolerate this condition to exist that affects the citizens of their states. But as I indicated before, there's a political process that created this agency. There's a political process that drives the decision making that's engaged in by this agency on a day-to-day basis. And it seems clear to me that there's a political process that should drive the agency to recognize the realities of public

employment as it applies in both states. But for a Court of Chancery to intrude in this area, I think is rather dangerous [27] and I think it raises conflicts not only within the states, or between the states, but within this state as I've indicated before. Without guidance from the Appellate Courts of this state, this court would be reluctant to do anything else but to dismiss the plaintiff's complaint, send him to the Appellate Division and get some guidance there that would bind all the trial courts of this state, and that's the decision I reach in this matter. I think the arguments were well done, counsel.

MR. POPLAR: Thank you for your courtesies, Judge. Thank you.

MR. HEINEMAN: Thank you, Your Honor.

APPENDIX E

[Filed Apr. 24, 1997]

SUPREME COURT OF NEW JERSEY
M-1058 September Term 1996

41,006

INTERNATIONAL UNION OF OPERATING ENGINEERS, ETC., *et al.*,
Plaintiffs,

v.

THE DELAWARE RIVER and BAY AUTHORITY,
Defendant-Movant.

ORDER

This matter having been duly presented to the Court, it is ORDERED that the motion for reconsideration of the opinion is denied.

WITNESS, the Honorable Deborah T. Porits, Chief Justice, at Trenton, this 23rd day of April, 1997.

/s/ [Illegible]
Clerk of the Supreme Court

APPENDIX F

PERTINENT STATUTORY PROVISIONS

DELAWARE-NEW JERSEY COMPACT

PUBLIC LAW 87-678; 76 STAT. 560
[H. J. Res. 783]

Joint Resolution granting consent of Congress to the State of Delaware and the State of New Jersey to enter into a compact to establish the Delaware River and Bay Authority for the development of the area in both States bordering the Delaware River and Bay.

Whereas, the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, being 53 Laws of Delaware, chapter 145, and P.L.1961, chapter 66 of the Laws of New Jersey, have provided, subject to the consent of Congress, for a compact, known as the Delaware-New Jersey Compact, establishing "The Delaware River and Bay Authority" for the development of the area in both States bordering the said Delaware River and Bay; and

Whereas, said compact reads as follows:

DELAWARE-NEW JERSEY COMPACT

Whereas, the State of Delaware and New Jersey are separated by the Delaware River and Bay which create a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two States thereby hindering the economic growth and development of those areas in both States which border the River and Bay; and

Whereas, the pressures of existing trends from increasing traffic, growing population and greater industrialization indicate the need for closer cooperation between the two States in order to advance the economic de-

velopment and to improve crossings, transportation, terminal and other facilities of the area; and

Whereas, the financing, construction, operation and maintenance of such crossings, transportation, terminal and other facilities of commerce and the over-all planning for future economic development of the area may be best accomplished for the benefit of the two States and their citizens, the region and nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority;

Now, therefore, the State of Delaware and the State of New Jersey, do hereby solemnly covenant and agree, each with the other as follows:

ARTICLE I.

SHORT TITLE

This Compact shall be known as the "Delaware-New Jersey Compact."

ARTICLE II.

DEFINITIONS

"Crossing" means any structure or facility adapted for public use in crossing the Delaware River or Bay between the States, whether by bridge, tunnel, ferry or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

"Transportation facility" and "terminal facility" mean any structure or facility other than a crossing as herein defined, adapted for public use within each of the States party hereto in connection with the transportaiton of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers,

slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportaiton of persons and property or the storage, handling or loading of property, as well as all apurtenances and equipment related thereto.

"Appurtenances" and "equipment" means all works, building, structures, devices, appliances and supplies, as well as every kind of mechanism, arrangement, object or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement and operation of any crossing, transportation facility or terminal facility.

"Project" means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or any part thereof, as well as for the operation, maintenance and improvement thereof.

"Tunnel" means a tunnel of one or more tubes.

"Governor" means any person authorized by the Constitution and law of each State to exercise the functions, powers and duties of that office.

"Authority" means the Authority created by this Compact or any agency successor thereto.

The singular whenever used herein shall include the plural, and the plural shall include the singular.

ARTICLE III.

FAITHFUL COOPERATION.

They agree to and pledge, each to the other, faithful cooperation in the effectuation of this Compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance and improvement of all projects entrusted to the Authority created by this Compact.

ARTICLE IV.

ESTABLISHMENT OF AGENCY; PURPOSES

The two States agree that there shall be created and they do hereby create a body politic, to be known as "The Delaware River and Bay Authority" (for brevity hereinafter referred to as the "Authority"), which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential governmental functions in effectuating such purposes, to wit:

(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of crossings between the States of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said river, together with such approaches or connections thereto as in the judgment of the Authority are required to make adequate and efficient connections between such crossings and any public highway or other routes in the State of Delaware or in the State of New Jersey; and

(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement and operation of any transportation or terminal facility within those areas of both States which border on or are adjacent to the Delaware River or Bay south of the aforesaid line and which in the judgment of the States is required for the sound economic developments of the area; and

(c) The performance of such other functions as may be hereafter entrusted to the Authority by concurrent legislation expressly in implementation hereof.

The Authority shall not undertake any project or part thereof, other than a crossing, without having first secured

approval thereof by concurrent legislation of the two States expressly in implementation hereof.

ARTICLE V.

COMMISSIONERS.

The Authority shall consist of ten Commissioners, five of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of Delaware, and five of whom shall be residents of and qualified to vote in, and shall be appointed from, the State of New Jersey; not more than three of the Commissioners of each State shall be of the same political party; the Commissioners for each State shall be appointed in the manner fixed and determined from time to time by the law of each State respectively. Each Commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the terms of the first Commissioners shall be so designated that the term of one Commissioner from each State shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any Commissioner may be suspended or removed from office as provided by law of the State from which he shall be appointed.

Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the Authority and may not receive any other compensation for services to the Authority except such as may from time to time be authorized from such revenues by concurrent legislation.

ARTICLE VI.

BOARD ACTION.

The Commissioners shall have charge of the Authority's property and affairs and shall, for the purpose of doing business, constitute a Board; but no action of the Commis-

sioners shall be binding or effective unless taken at a meeting at which at least three Commissioners from each State are present, and unless at least three Commissioners from each State shall vote in favor thereof. The vote of any one or more of the Commissioners from each State shall be subject to cancellation by the Governor of such State at any time within 10 days (Saturdays, Sundays, and public holidays in the particular State excepted) after receipt at the Governor's Office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by law for the manner of delivery of such minutes, and for notification of the action thereon.

ARTICLE VII.

GENERAL POWERS.

For the effectuation of its authorized purposes, the Authority is hereby granted the following powers:

a. To have perpetual succession.

b. To adopt and use an official seal.

c. To elect a chairman and a vice-chairman from among the Commissioners. The chairman and vice-chairman shall be elected from different States, and shall each hold office for two years. The chairmanship and vice-chairmanship shall be alternated between the two States.

d. To adopt by-laws to govern the conduct of its affairs by the Board of Commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties and functions, but no by-law, or rule, regulation or order shall take effect until it has been filed with the Secretary of State of each State or in such other manner in each State as may be provided by the law thereof. In the establishment of rules, regulations and orders respecting the use of any crossing, transportation or terminal facility owned or op-

erated by the Authority, including approach roads, it shall consult with appropriate officials of both States in order to insure, as far as possible, uniformity of such rules, regulations and orders with the law of both States.

e. To appoint, or employ, such other officers, agents, attorneys, engineers and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pension, terms of office and all other conditions and terms of employment and retention.

f. To enter into contracts and agreements with either State or with the United States, or with any public body, department, or other agency of either State or of the United States or with any individual, firm or corporation, deemed necessary or advisable for the exercise of its purposes and powers.

g. To accept from any government or governmental department, agency or other public or private body, or from any other source, grants or contributions of money or property as well as loans, advances, guarantees, or other forms of financial assistance which it may use for or in aid of any of its purposes.

h. To acquire (by gift, purchase or condemnation), own, hire, lease, use, operate and dispose of property, whether real, personal or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility or other project owned by another, and which the Authority is authorized to own and operate.

i. To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the Authority for the purpose of connecting the same with any highway or other route in either State.

j. To borrow money and to evidence such loans by bonds, notes or other obligations, either secured or un-

secured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the Authority and by a facsimile of its corporate seal.

k. To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

l. To grant the use of, by franchise, lease or otherwise, and to make charges for the use of, any crossing, facility or other project or property owned or controlled by it.

m. To exercise the right of eminent domain to acquire any property or interest therein.

n. To determine the exact location, system and character of and all other matters in connection with any and all crossings, transportation or terminal facilities or other projects which it may be authorized to own, construct, establish, effectuate, operate or control.

o. To exercise all other powers not inconsistent with the Constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

ARTICLE VIII.

ADDITIONAL POWERS.

For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the Authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States.

ARTICLE IX.

EMINENT DOMAIN.

If the Authority shall find and determine that any property or interest therein is required for a public use because in furtherance of the purposes of the Authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the Authority, shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted.

In any condemnation proceedings in connection with the acquisition by the Authority of property or property rights of any character in either State and the right of inspection and immediate entry thereon, through the exercise by it of its power of eminent domain, any existing or future law or rule of court of the State in which such property is located with respect to the condemnation of property for the construction, reconstruction and maintenance of highways therein, shall control. The Authority shall have the same power and authority with respect thereto as the State agency named in any such law; provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two States

with respect to the enactment, repeal or amendment of any law or rule of court on the subject of condemnation under which the Authority may proceed by virtue of this Article.

If the established grade of any street, avenue, highway or other route shall be changed by reason of the construction by the Authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway or other route, the Authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the State.

The power of the Authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

ARTICLE X.

REVENUES AND APPLICATION.

The Authority is hereby authorized to establish, levy and collect such tolls and other charges as it may deem necessary, proper or desirable, in connection with any crossing, transportation or terminal facility or other project which it is or may be authorized at any time to construct, own, operate or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof (2) to pay the cost of acquisition or construction, including the payment, amortization and retirement of bonds or other securities or obligations assumed, issued or incurred by the Authority, together with interest thereon and (3) to provide reserves for such purposes; and the Authority is hereby authorized and empowered, subject to prior pledges, if any, to pledge such tolls and other revenues or any part thereof as secu-

rity for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance and improvement of such facilities and projects, such proportion of the general expenses of the Authority as it shall deem properly chargeable thereto.

ARTICLE XI.

COVENANT WITH BONDHOLDERS.

The two said States covenant and agree with each other and with the holders of any bonds or other securities or obligations of the Authority, assumed, issued or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation or terminal facility or other project, that the two said States will not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish or impair the power of the Authority to establish, levy and collect tolls and other charges in connection therewith, and that neither of the two said States will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV (a) of this Compact, by any person or body other than the Authority; unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligations.

ARTICLE XII.

SECURITIES LAWFUL INVESTMENTS.

The bonds or other securities or obligations which may be issued by the Authority pursuant to this Compact,

or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all State and municipal officers and bodies of each State, all banks, bankers, trust companies, savings banks, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either State, may properly and legally invest any funds, including capital, belonging to them or within their control; and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any State or municipal officer or agency of either State for any purpose for which the deposit of bonds or other obligations of such State is now or may hereafter be authorized.

ARTICLE XIII.

TAX STATUS.

The powers and functions exercised by the Authority under this Compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the States of Delaware and New Jersey, the region and nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the Authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this Compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either State or political subdivision thereof, upon any of the property used by it

for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the Authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either State or any subdivision thereof.

ARTICLE XIV.

JURISDICTION; USE OF LANDS.

Each of the two States hereby consents to the use and occupancy by the Authority of any lands and property of the Authority in such State for the construction, operation, maintenance or improvement of any crossing, transportation or terminal facility or other project which it is or may be authorized at any time to construct, own or operate, including lands lying under water.

ARTICLE XV.

REVIEW AND ENFORCEMENT OF RULES.

Judicial proceedings to review any by-law, rule, regulation, order or other action of the Authority or to determine the meaning or effect thereof, may be brought in such court of each State, and pursuant to such laws or rules thereof, as a similar proceeding with respect to any agency of such State might be brought.

Each State may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation or order of the Authority, and, by law or rule of court, for the manner of enforcing the same.

ARTICLE XVI.

NO PLEDGE OF CREDIT.

The Authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey, or of any other agency or of any political subdivision of said States.

ARTIVLE XVII.

LOCAL COOPERATION.

All municipalities, political subdivisions and every department, agency or public body of each of the States are hereby authorized and empowered to cooperate with, aid and assist the Authority in effectuating the provisions of this Compact and of any amendment hereof or supplement hereto.

ARTICLE XVIII.

DEPOSITARIES.

All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either State are authorized to give security for the safekeeping and prompt payment of moneys of the Authority deposited by it with them, in such manner and form as may be required by and may be approved by the Authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the Authority, or may consist of the deposit with the Authority or other depositary approved by the Authority as collateral of such securities as the Authority may approve.

ARTICLE XIX.

AGENCY POLICE.

Members of the police force established by the Authority, regardless of their residence, shall have in each State, on the crossings, transportation or terminal facilities

and other projects and the approaches thereto, owned, operated or controlled by the Authority, and at such other places and under such circumstances as the law of each State may provide, all the powers of investigation, detention and arrest conferred by law on peace officers, sheriffs or constables in such State or usually exercised by such officers in each State.

ARTICLE XX.

REPORT AND AUDITS.

The Authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

It shall, at least annually, cause an independent audit of its fiscal affairs to be made and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each State.

It shall furnish such information or data with respect to its affairs as may be requested by the Governors or Legislatures of each State.

ARTICLE XXI.

BOUNDARIES UNAFFECTED.

The existing territorial or boundary lines of the States, or the jurisdiction of the two States established by said boundary lines, shall not be changed hereby.

Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:

The consent of Congress is hereby given to the States of Delaware and New Jersey to enter into the Compact set forth in this resolution, except that nothing contained in such compact shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the area which forms the subject of such compact.

Sec. 2. In addition to any other requirement of law, any project constructed by the Delaware River and Bay Authority in or over the navigable waters of the United States shall be subject to the procedural requirements of section 2(a) of the Fish and Wildlife Coordination Act, as amended (48 Stat. 401; 16 U.S.C. 662(a)).

Sec. 3. Nothing in this resolution shall be construed as—

(a) amending or superseding the provisions of the Act of September 27, 1961 (75 Stat. 688), or

(b) granting the consent of Congress to the use of tolls collected on any crossing for the financing of any transportation or terminal facility constructed or operated by the Authority, or

(c) granting advance consent of Congress for the performance by the Authority of other functions, as contemplated by Article IV, paragraph (c) of the Compact or for the assumption by the Authority of additional powers, as contemplated by Article VIII of the Compact.

Sec. 4. The right is hereby reserved to the Congress or any of its standing committees to require of the Authority the disclosure and furnishing of such information and data as is deemed appropriate by the Congress or

any committee thereof having jurisdiction of the subject matter of this resolution.

Sec. 5. The right to alter, amend, or repeal this joint resolution is hereby expressly reserved.

Approved September 20, 1962.

Public Law 101-565
101st Congress

Joint Resolution

Granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes.

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, being 53 Laws of Delaware, chapter 145, and Public Law 1961, chapter 66 of the Laws of New Jersey, have provided, subject to the consent of Congress, for a compact, known as the Delaware-New Jersey Compact, establishing "The Delaware River and Bay Authority" for the development of the area in both States bordering the said Delaware River and Bay; and

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, subject to the consent of Congress, have provided for an amendment to the Delaware-New Jersey Compact to authorize the Delaware River and Bay Authority to undertake economic development projects, other than major projects, at its own initiative, and to undertake major projects after securing only such approvals as may be required by the legislation of the State in which the project is to be located, except the Authority is prohibited from undertaking any major project to be located in the Delaware River and Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSENT OF CONGRESS.

The Congress consents to the amendments to the Delaware-New Jersey Compact which have been enacted by the States of Delaware and New Jersey, so that the Delaware-New Jersey Compact reads substantially as follows:

"DELAWARE-NEW JERSEY COMPACT

"Whereas the States of Delaware and New Jersey are separated by the Delaware River and Bay which creates a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two States thereby hindering the economic growth and development of those areas in both States which border the River and Bay; and

"Whereas the pressures of existing trends from increasing traffic, growing population, and greater industrialization indicate the need for closer cooperation between the two States in order to advance the economic development and to improve crossings, transportation, terminal, and other facilities of the area; and

"Whereas the financing, construction, operation and maintenance of such crossings, transportation, terminal, and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the two States and their citizens, the region and Nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

"Whereas the Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C. § 1701) and Public Law 1961, c. 66 (C. 32:11E-1 et seq.) of the Pamphlet Laws of New Jersey, with the consent of the United States Con-

gress by Joint Resolution being Public Law 87-678, 87th Congress, H.J. Res. 783, September 20, 1962, created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both States which border the Delaware River and Bay by the financing, development, construction, operation, and maintenance of crossings, transportation, or terminal facilities, and other faciilties of commerce, and by providing for overall planning for the future economic development of those areas; and

"Whereas the economic growth and development of areas of both States will be further advanced by authorizing the Authority to undertake economic development projects, other than major projects, as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the State in which the project is to be located, except that the Authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States; and

"Whereas the natural environment of those areas in the two States which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the Authority shall be in complete compliance with all applicable environmental protection laws and regulations before the Authority may undertake the planning, development, construction, or operation of any project, other than a crossing:

"NOW, THEREFORE, the State of Delaware and the State of New Jersey do hereby solemnly covenant and agree, each with the other as follows:

"ARTICLE I

"SHORT TITLE

"This Compact shall be known as the 'Delaware-New Jersey Compact'.

"ARTICLE II

"DEFINITIONS

" 'Crossing' means any structure or facility adapted for public use in crossing the Delaware River or Bay between the States, whether by bridge, tunnel, ferry, or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and service routes and all appurtenances and equipment relating thereto.

" 'Transportation facility' and 'terminal facility' means any structure or facility other than a crossing, as herein defined, adapted for public use within each of the States party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

" 'Commerce facility or development' means any structure or facility adapted for public use or any development for a public purpose within each of the States party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development (including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spoil disposal and port-oriented development), foreign trade zone site develop-

ment, manufacturing and industrial facilities, and other facilities of commerce which, in the judgment of the Authority, are required for the sound economic development of the area.

" 'Appurtenances' and 'Equipment' mean all works, buildings, structures, devices, appliances, and supplies, as well as every kind of mechanism, arrangement, object, or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement, and operation of any crossing, transportation facility or terminal facility, or commerce facility, or development.

" 'Project' means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance, and improvement thereof.

" 'Major Project' means any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area in the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, as determined in accordance with State law by the environmental agency of the State in which the major project is to be located.

" 'Tunnel' means a tunnel for one or more tubes.

" 'Governor' means any person authorized by the Constitution and law of each State to exercise the functions, powers, and duties of that office.

" 'Authority' means the Authority created by this Compact or any agency successor thereto.

"The singular whenever used in this Compact shall include the plural, and the plural shall include the singular.

"ARTICLE III

"FAITHFUL COOPERATION

"They agree to and pledge, each to the other, faithful cooperation in the effectuation of this Compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance, and improvement of all projects entrusted to the authority created by this Compact.

"ARTICLE IV

"ESTABLISHMENT OF AGENCY; PURPOSES

"The two States agree that there shall be created and they do hereby create a body politic, to be known as "The Delaware River and Bay Authority' (for brevity hereinafter referred to as the 'Authority') which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential government functions in effectuating such purposes, to wit:

"(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of crossings between the States of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said River, together with such approaches or connections thereto as in the judgment of the Authority are required to make adequate and efficient connections between such crossings and any public highway or other routes in the State of Delaware or in the State of New Jersey; and

"(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of any transportation or terminal facility within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, which facility, in the judgment of the Authority, is required for the sound economic development of the area; and

"(c) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of any commerce facility or development within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, which in the judgment of the Authority is required for the sound economic development of the area; and

"(d) The performance of such other functions as may be hereafter entrusted to the Authority by concurrent legislation expressly in implementation hereof.

"The Authority shall not undertake any major project or part thereof without having first secured such approvals as may be required by legislation of the State in which the project is to be located.

"The Authority shall not undertake any major project, or part thereof to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without having first secured approval thereof by concurrent legislation of the two States expressly in implementation thereof.

"The Authority shall not undertake any major project or part thereof without first giving public notice and holding a public hearing, if requested, on any proposed major project, in accordance with the law of the State in which the major project is to be located. Each State shall provide by law for the time and manner for the giving of such public notice, the requesting of a public hearing and the holding of such public hearings.

"ARTICLE V

"COMMISSIONERS

"The Authority shall consist of twelve Commissioners, six of whom shall be residents of and qualified to vote in and shall be appointed from the State of Delaware, and six of whom shall be residents of and qualified to vote in and shall be appointed from the State of New Jersey; not more than three of the Commissioners of each State shall be of the same political party; the Commissioners for each State shall be appointed in the manner fixed and determined from time to time by the law of each State respectively. Each Commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the terms of the first Commissioners shall be so designated that the term of at least one Commissioner from each State shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any Commissioner may be suspended or removed from office as provided by law of the State from which he shall be appointed.

"Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the Authority and may not receive any other compensation for services to the Authority except such as may from time to time be authorized from such revenues by concurrent legislation.

"ARTICE VI

"BOARD ACTION

"The Commissioners shall have charge of the Authority's property and affairs and shall, for the purpose of doing business, constitute a Board, but no action of the Commissioners shall be binding or effective unless taken at a meeting at which at least four Commissioners from each State are present, and unless at least four Commissioners from each State shall vote in favor thereof. The

vote of any one or more of the Commissioners from each State shall be subject to cancellation by the Governor of such State at any time within 10 days (Saturdays, Sundays, and public holidays in the particular State excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by law for the manner of delivery of such minutes and for notification of action thereon.

"ARTICLE VII

"GENERAL POWERS

"For the effectuation of its authorized purposes, the Authority is hereby granted the following powers:

"(a) To have perpetual succession.

"(b) To adopt and use an official seal.

"(c) To elect a chairman and a vice chairman from among the Commissioners. The chairman and vice chairman shall be elected from different States and shall each hold office for two years. The chairmanship and vice chairmanship shall be alternated between the two States.

"(d) To adopt bylaws to govern the conduct of its affairs by the Board of Commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties, and functions, but no bylaw or rule, regulation, or order shall take effect until it has been filed with the Secretary of State of each State or in such other manner in each State as may be provided by the law thereof. In the establishment of rules, regulations, and orders respecting the use of any crossing, transportation, or terminal facility or commerce facility or development owned or operated by the Authority, including approach roads, it shall consult with appropritae officials of both States in order to insure, as far as possible, uniformity of such rules, regulations, and orders with the laws of both States.

"(e) To appoint or employ such other officers, agents, attorneys, engineers, and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.

"(f) To enter into contracts and agreements with either State or with the United States, or with any public body, department, or other agency of either State or of the United States or with any individual, firm, or corporation deemed necessary or advisable for the exercise of its purposes and powers.

"(g) To accept from any government or governmental department, agency, or other public or private body, or from any other source, grants, or contributions of money or property as well as loans, advances, guarantees, or other forms of financial assistance which it may use for or in aid of any of its purposes.

"(h) To acquire (by gift, purchase, or condemnation), own, hire, lease, use, operate, and dispose of property, whether real, personal, or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility, or other projects owned by another and which the Authority is authorized to own and operate.

"(i) To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the Authority for the purpose of connecting the same with any highway or other route in either State.

"(j) To borrow money and to evidence such loans by bonds, notes, or other obligations, either secured or unsecured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the Authority and by a facsimile of its corporate seal.

"(k) To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents, or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

"(l) To grant the use of by franchise, lease, or otherwise, and to make charges for the use of any crossing, facility, or other project or property owned or controlled by it.

"(m) To exercise the right of eminent domain to acquire any property or interest therein.

"(n) To determine the exact location, system, and character of and all other matters in connection with any and all crossings, transportation, or terminal facilities, commerce facilities or developments or other projects which it may be authorized to own, construct, establish, effectuate, operate, or control.

"(o) To exercise all other powers not inconsistent with the Constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

"ARTICLE VIII

"ADDITIONAL POWERS

"For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the Authority by Con-

gress and exercised by it; but no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States.

"ARTICLE IX

"EMINENT DOMAIN

"If the Authority shall find and determine that any property or interest therein is required for a public use in furtherance of the purposes of the Authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the Authority shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted. The Authority shall not exercise the power of eminent domain granted herein to acquire any property, other than a crossing, devoted to a public use, of either State, or of any municipality, local government, agency, public authority or commission, or of two or more of them, for any purpose other than a crossing, without having first secured the authorization of the holder of the title to the land in question and such other approvals as may be required by legislation of the State in which the project is to be located. The Authority shall not exercise the power of eminent domain in connection with any commerce facility or development.

"In any condemnation proceedings in connection with the acquisition by the Authority of property or property rights of any character in either State and the right of inspection and immediate entry thereon, through the exercise by it of its power to eminent domain, any existing or future law or rule of court of the State in which such property is located with respect to the condemnation of property for the construction, reconstruction, and maintenance of highways therein shall control. The Authority shall have the same power and authority with respect

thereto as the State agency named in any such law, provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two States with respect to the enactment, repeal, or amendment of any law or rule of court on the subject of condemnation under which the Authority may proceed by virtue of this Article.

"If the established grade of any street, avenue, highway, or other route shall be changed by reason of the construction by the Authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway, or other route, the Authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the State.

"The power of the Authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

"ARTICLE X

"REVENUE AND APPLICATION

"The Authority is hereby authorized to establish, levy, and collect such tolls and other charges as it may deem necessary, proper, or desirable in connection with any crossing, transportation, or terminal facility, commerce facility or development or other project which it is or may be authorized at anytime to construct, own, operate, or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof, (2) to pay the cost of acquisition or construction, including the payment, amortization, and retirement of bonds or other securities or obligations assumed, issued, or incurred by the Authority, together with interest thereon, and (3) to provide reserves for such purposes; and the Authority is hereby authorized and empowered, subject to prior

pledges, if any, to pledge such tolls and other revenues or any part thereof as security for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance, and improvement of such facilities and projects such proportion of the general expenses of the Authority as it shall deem properly chargeable thereto.

"ARTICLE XI

"COVENANT WITH BONDHOLDERS

"The two said States covenant and agree with each other and with the holders of any bonds or other securities or obligations of the Authority, assumed, issued, or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation, or terminal facility, commerce facility or development or other project, that the two said States will not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish, or impair the power of the Authority to establish, levy, and collect tolls and other charges in connection therewith, and that neither of the two said States will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV(a) of this Compact by any person or body other than the Authority, unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligations.

"ARTICLE XII

"SECURITIES LAWFUL INVESTMENTS

"The bonds or other securities or obligations which may be issued by the Authority pursuant to this Compact, or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all State and municipal officers and bodies of each State, all banks, bankers, trust companies, savings banks, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either State may properly and legally invest any funds, including capital, belonging to them or within their control, and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any State or municipal officer or agency of either State for any purpose for which the deposit of bonds or other obligations of such State is now or may hereafter be authorized.

"ARTICLE XIII

"TAX STATUS

"The powers and functions exercised by the Authority under this Compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the States of Delaware and New Jersey, the region and Nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the Authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this Compact and of any law relating

thereto, and shall not be required to pay any taxes or assessments of any character, levied by either State or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the Authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either State or any subdivision thereof.

"ARTICLE XIV

"JURISDICTION; USE OF LANDS

"Each of the two States hereby consents to the use and occupancy by the Authority of any lands and property of the Authority in such State for the construction, operation, maintenance or improvement of any crossing, transportation, or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own, or operate, including lands lying under water.

"ARTICLE XV

"REVIEW AND ENFORCEMENT OF RULES

Judicial proceedings to review any bylaw, rule, regulation, order, or other action of the Authority or to determine the meaning or effect thereof may be brought in such court of each State, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such State might be brought.

"Each State may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation, or order of the Authority, and, by law or rule of court, for the manner of enforcing the same.

"ARTICLE XVI

"NO PLEDGE OF CREDIT

"The Authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey or of any other agency or of any political subdivision of said States.

"ARTICLE XVII

"LOCAL COOPERATION AND AGREEMENTS

"(a) All municipalities, political subdivisions, and every department, agency, or public body of each of the States are hereby authorized and empowered to cooperate with, aid and assist the Authority in effectuating the provisions of this Compact and of any amendment hereof or supplement hereto.

"(b) The Authority is authorized and empowered to cooperate with each of the States, or any political subdivision thereof, and with any municipality, local government, agency, public authority or commission of the foregoing, in connection with the acquisition, planning, rehabilitation, construction or development of any project, other than a crossing, and to enter into an agreement or agreements, subject to compliance with the laws of the State in which the project is to be located, with each of the States, or any political subdivision thereof, and with any municipality, county, local government, agency, public authority, or commission or with two or more of them, for, or relating to such purposes.

"(c) The Authority and the city, town, municipality, or other political subdivision in which any project, other than a crossing, is to be located are hereby authorized and empowers, subject to compliance with the laws of the State in which the project is to be located, to enter into an agreement or agreements to provide which local laws, resolutions, ordinances, rules, and regulations, if any, of the city, town, municipality, or other political subdivision

affected by such project shall apply to such project. All other existing local laws, resolutions, ordinances or rules and regulations not provided for in the agreement shall be applicable to the project, other than a crossing. All local laws, resolutions, ordinances or rules and regulations enacted after the date of the agreement shall not be applicable to such projects unless made applicable by the agreement or any modification thereto.

"ARTICLE XVIII

"DEPOSITARIES

"All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either State are authorized to give security for the safekeeping and prompt payment of moneys of the Authority deposited by it with them, in such manner and form as may be required by and may be approved by the Authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the Authority, or may consist of the deposit with the Authority or other depository approved by the Authority as collateral of such securities as the Authority may approve.

"ARTICLE XIX

"AGENCY POLICE

"Members of the police force established by the Authority, regardless of their residence, shall have in each State, on the crossings, transportation or terminal facilities, commerce facilities or developments and other projects and the approaches thereto, owned, operated, or controlled by the Authority, and at such other places and under such circumstances as the law of each State may provide, all the powers of investigation, detention, and arrest conferred by law on peace officers, sheriffs, or constables in such State or usually exercised by such officers in each State.

"ARTICLE XX

"REPORTS AND AUDITS

"The Authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

"It shall, at least annually, cause an independent audit of its fiscal affairs to be made, and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each State.

"It shall furnish such information or data with respect to its affairs as may be requested by the Governor or Legislature of each State.

"ARTICLE XXI

"BOUNDARIES UNAFFECTED

"The existing territorial or boundary lines of the States or the jurisdiction of the two States established by said boundary lines shall not be changed hereby.

"ARTICLE XXII

"ENVIRONMENTAL PROTECTION

"(a) The planning, development, construction, and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives, and orders, including, without limitation, any coastal zone laws, wetlands law, or subaqueous land laws or natural resources laws, now or hereinafter enacted, or promulgated by the State in which the project, or any part thereof, is located.

"(b) The planning, development, construction, and operation of any project, other than a crossing, to be located in the Delaware River and Bay shall comply with all environmental protection laws, regulations, directives, and orders, including, without limitation, any coastal zone laws, wetlands laws, subaqueous land laws or natural resource laws now or hereinafter enacted or promulgated by either State.

"(c) The planning, development, construction, and operation of any project, other than a crossing, located in the coastal zone of Delaware (as defined in Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989), shall be subject to the same limitations, requirements, procedures, and appeals as apply to any other person under the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. Nothing in this Compact shall be deemed to preempt, modify, or supersede any provision of the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. The interpretation and application of this paragraph shall be governed by the laws of the State of Delaware and be determined by the courts of the State of Delaware.

"(d) The planning, development, construction, and operation of any project, other than a crossing, located in New Jersey, shall be subject to the provisions of New Jersey law, when applicable, including but not limited to the Wetlands Act of 1970, N.J.S.A. 13:9A-1, et seq. and the Coastal Area Facility Review Act, N.J.S.A. 13:19-1, et seq.".

SEC. 2. FEDERAL JURISDICTION NOT AFFECTED.

Nothing contained in the compact set forth in section 1 shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the area which forms the subject of such compact.

SEC. 3. AUTHORITY FOR ADDITIONAL TOLL BRIDGES.

Section 4 of the Act entitled "An Act to authorize the State of Delaware, by and through its State highway department, to construct, maintain, and operate a toll bridge across the Delaware River near Wilmington, Delaware" approved July 13, 1946 (60 Stat. 533), as amended by the Act of June 27, 1951 (65 Stat. 91) and the Act of October 3, 1962 (76 Stat. 741-742), is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding after paragraph (4) the following:

"(5) to pay the cost of any project which the Delaware River and Bay Authority is or may be authorized to construct, own, operate, or control, under the Delaware-New Jersey Compact, as consented to by the Congress.".

SEC. 4. REQUIREMENTS OF OTHER LAWS.

In addition to any other requirement of law, any project constructed by the Delaware River and Bay Authority in and over the navigable waters of the United States shall be subject to the procedural requirements of section 2(a) of the Fish and Wildlife Coordination Act (16 U.S.C. 662(a)).

SEC. 5. CONSTRUCTION.

Nothing in this resolution shall be construed as—

(1) amending or superseding the provisions of the Act of September 27, 1961 (75 Stat. 688); or

(2) granting advance consent of Congress for the performance by the Delaware River and Bay Authority of other functions, as contemplated by Article

IV, paragraph (d) of the compact set forth in section 1 or for the assumption by the Authority of additional powers, as contemplated by Article VIII of such compact.

SEC. 6. DISCLOSURE OF INFORMATION.

The right is reserved to the Congress or any of its standing committees to require of the Delaware River and Bay Authority the disclosure and furnishing of such information and data as is deemed appropriate by the Congress or any committee thereof having jurisdiction of the subject matter of this resolution.

SEC. 7. RESERVATION BY THE CONGRESS.

The right to alter, amend, or repeal this joint resolution is expressly reserved.

Approved November 15, 1990.